

MISSOURI DEPARTMENT OF NATURAL RESOURCES
LAND RECLAMATION COMMISSION

In the Matter of:

MAGRUDER LIMESTONE CO.,)	
INC., Osage Beach)	
Quarry, Miller County,)	
Missouri,)	
Applicant.)	Proceeding Under The
LINDA WEEKS, et al.,)	Land Reclamation Act,
Petitioners,)	Sections
vs.)	444.760-444.789
LARRY P. COEN, Staff)	
Director, Land)	
Reclamation Program,)	
Division of)	
Environmental Quality,)	
Respondent.)	

ADMINISTRATIVE HEARING

APRIL 30, 2008

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This matter came on for hearing on
April 30, 2008, before Administrative Hearing Officer
W.B. Tichenor between the hours of 9:00 o'clock in
the forenoon and 4:00 o'clock in the afternoon of
that day, at the offices of the Missouri Department
of Natural Resources, 1101 East Riverside Drive,
Jefferson City, Missouri 65102, before Judy K. Moore,
a Certified Court Reporter within and for the State
of Missouri, in a certain cause now pending before
the Land Reclamation Commission, State of Missouri,
between MAGRUDER LIMESTONE CO., INC., Applicant;
LINDA WEEKS, et al., Petitioners; and LARRY P. COEN,
Respondent.

A P P E A R A N C E S

Appearing on behalf of Petitioners City of
Osage Beach and City of Lake Ozark were MR. STEVEN E.
MAUER and MR. JOHN T. POLHEMUS of Bryan Cave, L.L.P.,
1200 Main Street, Suite 3500, Kansas City, Missouri
64105-2100. (816) 374-3244. Semauer@bryancave.com.
Appearing on behalf of the Applicant were
MR. RICHARD S. BROWNLEE, III, and MR. ADAM R.
TROUTWINE of Hendren & Andrea, L.L.C., 221 Bolivar
Street, Suite 300, Jefferson City, Missouri 65102.
(573) 636-8135.
Appearing on behalf of the Respondent was
MR. TIMOTHY P. DUGGAN, Assistant Attorney General,
221 West High, 8th Floor, Jefferson City, Missouri
65101. (573) 751-9802.

HEARING OFFICER: The Land
Reclamation Commission hearing in re the matter of
Magruder Limestone Company, Inc., expansion of Permit
No. 0086 is reconvened on April 30th, 2008. Before
we proceed, I need to take care of a couple of three
matters relating to Applicant's Exhibit 19 to begin
with. The Hearing Officer has reviewed the exhibit,
in particular the first page of the tendered exhibit
which was objected to, and then the Counsel for the
Joint Board, Mr. Mauer?

MR. MAUER: Yes.

HEARING OFFICER: All right.

Mr. Mauer provided to the Hearing Officer the copy of
the contract from which the first page of Applicant's
19 was taken. The Hearing Officer has reviewed the
entirety of that contract which covers extensive work
as far as installation of sewer lines. The review
the Hearing Officer did was in particular dealing
with whether or not the words "finished work" were
defined anywhere in the contract. They are not.

The Hearing Officer, having read the
provision highlighted on the first page of
Applicant's 19 within the context of this contract,
can find no basis to conclude that finished work
means the 18-inch line. In fact, the Hearing Officer

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<p>1 from reading the contract is of the opinion that 2 finished work actually relates to such structures 3 along the course of various pipelines, houses, other 4 buildings and such, but has no reference to the 5 pipeline as included -- as installed. Therefore, 6 Page 1 of Applicant's 19 is not going to be received 7 into evidence. 8 Page 2 is going to be received. Page 2 is 9 the single document, which actually there are two 10 separate pages which have been taped together. This 11 was explained in the testimony of Mr. McDonald, and 12 these are the drawings from A.C. Kirkwood Associates 13 engineers which show as far as the portion of the 14 18-inch line which is on the Magruder property. So 15 Applicant's 19 will consist simply of the drawings 16 from the Kirkwood & Associates engineers. 17 As to Applicant's 20, the Hearing Officer 18 has reviewed the entirety of the Phase I for the pump 19 stations and forced main improvements for the E.T. 20 Archer Corporation and has confirmed that, in fact, 21 the second page of Applicant's 20 is a photocopy, a 22 reduced in size photocopy of the portion of the 23 24-inch line on the Magruder property. As far as the 24 first page of that exhibit, the objections really go 25 more to what, if any, weight the Hearing Officer</p>	<p>1 MR. BROWNLEE: Correct. 2 HEARING OFFICER: Mr. Mauer, Mr. King 3 is going to testify later, but you have two witnesses 4 before that, as I understand? 5 MR. MAUER: Yes. Mr. Hutchcraft. 6 HEARING OFFICER: Hutchcraft? 7 MR. MAUER: Who is already here, and 8 Mr. Gognan who I do not believe has yet arrived but 9 will be here this morning. 10 HEARING OFFICER: You're not 11 anticipating that Mayor Lions is going to testify 12 today? 13 MR. MAUER: Well, she's available and 14 will testify at some point. If we get to her 15 today -- 16 HEARING OFFICER: Is Mayor Lions 17 still the president of the Joint Sewer Board? 18 MR. MAUER: Yes. 19 HEARING OFFICER: All right. Then 20 Mayor Lions would not be excluded because in her 21 capacity as president of the Joint Sewer Board she is 22 a party. Were you intending on calling 23 Mr. Hutchcraft first? 24 MR. MAUER: Yes. 25 HEARING OFFICER: Mr. King is</p>
Page 7	Page 9
<p>1 should give to it. The Hearing Officer deems there 2 is relevance and importance to this regarding the 3 fact that there is a 150-foot section of the 24-inch 4 main which is or was concrete encased, and therefore 5 Exhibit Applicant's 20 will be received as tendered, 6 both pages of the document. 7 MR. BROWNLEE: I think a correction. 8 I believe the testimony was it was 200 feet. They 9 made a notation. 10 HEARING OFFICER: The document has 11 150 feet. The Hearing Officer will double check as 12 far as -- 13 MR. BROWNLEE: The front sheet is 14 where I was making reference, Judge, the stations, 15 247 and 249. 16 HEARING OFFICER: And the Hearing 17 Officer understands that that should equate to that. 18 The document itself says that it's 150 feet between 19 there, so it may be that they simply referenced to 20 those stations and the encasement did not run to the 21 full length of it. So with that, we've taken care of 22 those two items. 23 Mr. Brownlee, it is my understanding you 24 wish at this time to exclude witnesses who are yet to 25 testify until they are called to testify, correct?</p>	<p>1 present? 2 MR. BROWNLEE: Yeah. He was here 3 yesterday. I don't have a problem because he's an 4 assistant member, I think, aren't you? You're on the 5 Joint Sewer Board as an associate member, I believe, 6 aren't you, or substitute or something? 7 MR. KING: No. An alternate. 8 HEARING OFFICER: So you're not 9 asking Mr. King to be excluded? 10 MR. BROWNLEE: No. He's an alternate 11 on the Sewer Board. He's a party. That's why I 12 didn't yesterday. 13 HEARING OFFICER: So at this point we 14 have Mr. Gognan who has not appeared. 15 MR. MAUER: Right. He's not here 16 yet. 17 HEARING OFFICER: And I don't know 18 him. 19 MR. MAUER: He's not here. 20 HEARING OFFICER: He's not here? 21 MR. MAUER: He's not here. 22 HEARING OFFICER: When do you expect 23 him to be here, Mr. Mauer? 24 MR. MAUER: He was planning on 25 testifying at 11:00.</p>

3 (Pages 6 to 9)

Page 10	Page 12
<p>1 HEARING OFFICER: At 11:00? All 2 right. We will have taken a break before then. Are 3 there any other witnesses, Mr. Mauer, that are 4 present that you expect to call who are present in 5 the room? 6 MR. MAUER: No. 7 HEARING OFFICER: All right. Then 8 there's no need to exclude anyone. With that, you 9 wish to call Mr. Hutchcraft at this time? 10 MR. MAUER: Yes, I do. 11 HEARING OFFICER: Mr. Hutchcraft, 12 would you come forward to be sworn. 13 GARY HUTCHCRAFT, 14 of lawful age, produced, sworn, and examined on 15 behalf of the Joint Sewer Board, deposes and says: 16 HEARING OFFICER: Please have a seat. 17 EXAMINATION 18 QUESTIONS BY MR. MAUER: 19 Q. Good morning, Mr. Hutchcraft. 20 A. Good morning. 21 Q. Thank you for making the trip this morning. 22 Would you please give your full name for the Hearing 23 Officer, please. 24 A. Gary Floyd Hutchcraft. 25 Q. And where do you live, Mr. Hutchcraft?</p>	<p>1 A. Mena. Mena, Arkansas. I worked for the 2 City. 3 Q. And what was your position in Mena, 4 Arkansas? 5 A. Well, my first three years I was a water 6 operator, and then the last nine years I was a 7 wastewater supervisor. 8 Q. And in your nine years as a wastewater 9 supervisor for Mena, Arkansas, can you give the 10 Hearing Officer just a little bit of information 11 about some of your job duties and things that you did 12 as a -- in charge of the wastewater for Mena, 13 Arkansas? 14 A. We took care of the treatment plant, the 15 wastewater treatment plant, or I did, and I actually 16 took care of the lift stations in the municipality 17 itself. I was a split operator at one time, worked 18 water and wastewater, just did whatever, whatever 19 needed to be done. 20 Q. How big was the sewage treatment plant in 21 Mena, Arkansas? 22 A. It was 3MGD, 3 million gallon a day. 23 Q. And how big is the sewage treatment plant 24 here that we're talking about for Lake Ozark and 25 Osage Beach?</p>
Page 11	Page 13
<p>1 A. 61-A Village Marina Road, Eldon. 2 Q. And what is your position, sir, your 3 employment? 4 A. I'm the local manager. 5 Q. Local manager for who? 6 A. For Alliance Water Resources. 7 Q. Would you please tell the Hearing Officer 8 what the business of Alliance Water Resources is. 9 What does Alliance Water Resources do? 10 A. Well, we're contract operations. We 11 contract for wastewater, water, public works, a 12 little bit of -- anything to do with water, 13 wastewater. Anything the City has any problems with, 14 that's what we try to help with. 15 Q. Is Alliance a private company? 16 A. Yes. 17 Q. How long have you worked for Alliance? 18 A. Six years. 19 Q. And prior to working for Alliance, what did 20 you do? 21 A. I ran a -- I was a supervisor down in 22 Arkansas. I worked down there 12 years for water and 23 wastewater both. 24 Q. And when you say "down there," where did you 25 work in Arkansas?</p>	<p>1 A. 2.4 million gallon a day. 2 Q. So it was very similar in size? 3 A. Yeah. Very close. 4 Q. Do you have any -- can you tell the Hearing 5 Officer about your educational background? 6 A. Well, I've had -- I've got Arkansas A -- 7 it's actually DS -- I think it's called Arkansas 8 Wastewater 3, Arkansas Water 3, and then I've got a 9 Missouri Wastewater A license. And I've had just, 10 you know, multiple years of training and schooling, 11 because we've got to have so many hours per year of 12 schooling. And I've had college courses for computer 13 training and just many years of -- 18 years of 14 schooling. 15 Q. Okay. Tell us about, what does a Missouri A 16 license or certification allow you to do? 17 A. A is the -- is the highest that -- as far as 18 I know that you can get in the state of Missouri. 19 You're just -- I'm the manager. The plant requires 20 an A license, the size of it. 21 Q. Moving forward from Mena, Arkansas, then, 22 where did you go? Did you go directly from Mena, 23 then, to work for Alliance? 24 A. Yeah. 25 Q. And where was your first employment with</p>

4 (Pages 10 to 13)

Page 14	Page 16
<p>1 Alliance? Where were you located?</p> <p>2 A. At Lake Ozark, Osage Beach.</p> <p>3 Q. And what was your -- what years,</p> <p>4 approximately, are we talking about, then?</p> <p>5 A. 2002.</p> <p>6 Q. And what did you do there?</p> <p>7 A. I was just an operator.</p> <p>8 Q. And what did you do as an operator at the</p> <p>9 Osage Beach/Lake Ozark sewage treatment plant?</p> <p>10 A. I actually ran -- did the maintenance and</p> <p>11 ran the lab and whatever was required of me. You</p> <p>12 know, we got another manager which was my boss.</p> <p>13 Q. And how long were you in -- stationed in</p> <p>14 Osage Beach as an operator?</p> <p>15 A. One year.</p> <p>16 Q. And then where did you go after that?</p> <p>17 A. I went to Parkville, Missouri, as a local</p> <p>18 manager. They promoted me to a local manager after a</p> <p>19 year of employment there at the lake, and then I went</p> <p>20 up there as manager for one year, from 2002 to 2003.</p> <p>21 Q. All right. And tell us a little bit about</p> <p>22 the Parkville sewage treatment system. How big is</p> <p>23 that system?</p> <p>24 A. It's a little bit smaller than the lake.</p> <p>25 It's just the -- it's an SBR treatment plant, at the</p>	<p>1 Q. So you're treating all of the water and the</p> <p>2 sewage in the system all at the same time?</p> <p>3 A. Yeah.</p> <p>4 Q. All right. Before we leave Parkville, you</p> <p>5 mentioned lift stations and grinder pumps and things</p> <p>6 like that. Were you responsible for all of that in</p> <p>7 the system?</p> <p>8 A. Yes. Yes. Alliance was, yes.</p> <p>9 Q. Were you familiar, then, with line breaks or</p> <p>10 things like that?</p> <p>11 A. Yes, sir. Yes, we were.</p> <p>12 Q. Did you experience while you were in</p> <p>13 Parkville line breaks and other sewage discharges?</p> <p>14 A. Yeah. Yeah.</p> <p>15 Q. I mean, do those things happen?</p> <p>16 A. Oh, yeah. Yeah. That's just a normal --</p> <p>17 especially when you have a lot of construction and</p> <p>18 stuff like that. That's exactly what we dealt with</p> <p>19 up there, a lot of construction. And the contractors</p> <p>20 would run into something and would, you know, cause a</p> <p>21 break.</p> <p>22 Q. Okay. When a contractor would hit a feeder</p> <p>23 line or a -- you know, a transmission line, something</p> <p>24 like that, what did you do?</p> <p>25 A. We would just have to shut -- shut the</p>
Page 15	Page 17
<p>1 time. It's been converted over now, but we had,</p> <p>2 like, 800 grinder stations, grinder lift stations,</p> <p>3 and eight or nine major lift stations that pumped to</p> <p>4 our treatment plant. It's -- I think it was rated</p> <p>5 at, like, 1.8 million gallons.</p> <p>6 Q. Per day?</p> <p>7 A. Yeah.</p> <p>8 Q. Now, when you say "SBR," what does SBR stand</p> <p>9 for?</p> <p>10 A. It's called a sequencing batch reactor. It</p> <p>11 actually treats the wastewater in batches. It brings</p> <p>12 it in in so much, and you'll treat -- it's actually</p> <p>13 two separate tanks, and you're actually bringing</p> <p>14 influent into one tank and you're actually going to</p> <p>15 treating it in this while you're decanting the</p> <p>16 effluent off of the other tank. So you're actually</p> <p>17 swapping them. They alternate from batch to batch as</p> <p>18 you treat.</p> <p>19 Q. And that's the way the Parkville system was</p> <p>20 designed?</p> <p>21 A. Yeah.</p> <p>22 Q. All right. Now, the Osage Beach system that</p> <p>23 we're going to talk about here this morning, is it</p> <p>24 this SBR-type system?</p> <p>25 A. No. No. No.</p>	<p>1 system down until we could get it fixed.</p> <p>2 Q. And was the system designed or were the</p> <p>3 breaks occurred so that you could close off a part of</p> <p>4 the system so that you could get to the break?</p> <p>5 A. Well, the grinder pumps are a little bit</p> <p>6 different. They run on a smaller -- they've got the</p> <p>7 smaller piping that goes into the mains, and yes, we</p> <p>8 could, you know, shut that section of main off and</p> <p>9 then go in and fix the main while the other part of</p> <p>10 the system was still going.</p> <p>11 Q. Okay. So in Parkville the way that system</p> <p>12 operated, you were actually capable of, if a line</p> <p>13 break occurred, you could bypass a section or shut</p> <p>14 down a part? Do I understand that correctly?</p> <p>15 A. It depends where it was at.</p> <p>16 MR. BROWNLEE: Objection. Leading.</p> <p>17 HEARING OFFICER: Rephrase your</p> <p>18 question, Mr. Mauer.</p> <p>19 Q. (By Mr. Mauer) Was the system designed in</p> <p>20 Parkville so that you could bypass a break and still</p> <p>21 allow the system to continue?</p> <p>22 A. Yes.</p> <p>23 Q. Moving on from Parkville, then, you were</p> <p>24 there for one year?</p> <p>25 A. Uh-huh.</p>

5 (Pages 14 to 17)

Page 18	Page 20
<p>1 Q. And where did you go after that?</p> <p>2 A. Pardon?</p> <p>3 Q. Where did you go after Parkville?</p> <p>4 A. Back to the Lake of the Ozarks.</p> <p>5 Q. And what was your position when you came</p> <p>6 back to Lake of the Ozarks?</p> <p>7 A. Local manager.</p> <p>8 Q. All right. And when we talk about Lake of</p> <p>9 the Ozarks, are we talking about the sewage treatment</p> <p>10 plant that's owned by the Joint Sewer Board of Lake</p> <p>11 Ozark and Osage Beach?</p> <p>12 A. Yes, sir.</p> <p>13 Q. All right. When did you come back? What</p> <p>14 year did you come back to Lake Ozark?</p> <p>15 A. 2004. January 2004.</p> <p>16 Q. And has your position always been the same</p> <p>17 since then?</p> <p>18 A. Yes.</p> <p>19 Q. Please describe for Mr. Tichenor what you do</p> <p>20 on a daily basis as the manager of the Lake Ozark</p> <p>21 sewage treatment plant.</p> <p>22 A. We just maintain the plant. We make sure --</p> <p>23 you know, I tell the guys -- you know, line them out</p> <p>24 every morning and do all the paperwork necessary, and</p> <p>25 we just try to maintain the plant as good as we can.</p>	<p>1 the equipment that you're trying to maintain that's</p> <p>2 now 20 years old?</p> <p>3 A. It's old, but we've kept up on the</p> <p>4 maintenance on it and it -- it's still in good -- you</p> <p>5 know, it's good equipment, runs good, but we just</p> <p>6 stay on top of the maintenance program. And it's</p> <p>7 still good equipment. You know, we've spent a lot of</p> <p>8 time bringing it back up to -- restoring it to where</p> <p>9 it needs to be and everything running properly.</p> <p>10 Q. Can you tell me some of the other cities and</p> <p>11 projects that Alliance is involved in besides</p> <p>12 Parkville and Osage Beach?</p> <p>13 A. Yeah. We've got Cape Girardeau, O'Fallon.</p> <p>14 Cape Girardeau is water. They've had a water system</p> <p>15 in Cape. And O'Fallon, they've got the water and</p> <p>16 wastewater. St. Charles, they have water and</p> <p>17 wastewater. We've got Phelps County. We've got,</p> <p>18 like, I think 20, 21 different divisions.</p> <p>19 Q. And is Alliance located in any state other</p> <p>20 than Missouri?</p> <p>21 A. Yes. Iowa. Mitokida and Tipton, Iowa.</p> <p>22 Q. Your employment is with Alliance; is that</p> <p>23 right?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Are you employed at all by the City of Osage</p>
Page 19	Page 21
<p>1 Q. Describe for us, when you say "maintain the</p> <p>2 plant," walk us through some of the maintenance that</p> <p>3 you've done within the last month. Tell us some of</p> <p>4 the projects so we get a sense of what you mean by</p> <p>5 that.</p> <p>6 A. Well, mainly just keeping up your routine</p> <p>7 maintenance, you know, on a monthly basis, keeping</p> <p>8 your motors, pumps, everything running properly and</p> <p>9 making sure that, you know, you're putting out</p> <p>10 excellent effluent at all times, you know, 24 hours a</p> <p>11 day.</p> <p>12 Q. Do you know when the sewage treatment plant</p> <p>13 in Osage Beach was built?</p> <p>14 A. If I recall, I think it's 1985.</p> <p>15 Q. All right. And when you say "maintaining,"</p> <p>16 are you dealing with new parts or are you dealing</p> <p>17 with -- are you trying to maintain original equipment</p> <p>18 and original parts that were constructed since 1985?</p> <p>19 A. Most of the equipment is still original.</p> <p>20 Q. So you're talking about over 30 years,</p> <p>21 then -- or 20 years? Excuse me.</p> <p>22 A. Over 20.</p> <p>23 Q. 20 years?</p> <p>24 A. Yes, over 20.</p> <p>25 Q. Can you describe the condition of some of</p>	<p>1 Beach or the City of Lake Ozark?</p> <p>2 A. No.</p> <p>3 Q. Are you controlled at all by the City of</p> <p>4 Osage Beach or the City of Lake Ozark?</p> <p>5 A. Not really, no.</p> <p>6 Q. Other than I assume that they're your</p> <p>7 customer?</p> <p>8 A. Yeah. They're a customer, yeah.</p> <p>9 Q. Can you generally describe for Mr. Tichenor</p> <p>10 the size of the Osage Beach/Lake Ozark sewage</p> <p>11 treatment system and talk -- and what it means for</p> <p>12 your gallons per day so we can get a sense of the</p> <p>13 size of the facility?</p> <p>14 A. Yeah. The design is 2.4 million, and we</p> <p>15 receive anywhere from 1.3 to 1.7 million gallon a</p> <p>16 day. We have two oxidation ditches that hold right</p> <p>17 at 2 million gallon, actually 1.8 million per basin.</p> <p>18 Then we have the digesters over the hill and then the</p> <p>19 clarifiers. We have three clarifiers, and then we</p> <p>20 have the -- our main influent building. It's a big</p> <p>21 structure. And we've got a lot of actually</p> <p>22 underground stuff over there in the main influent</p> <p>23 building, too.</p> <p>24 Q. Okay. I want to show you what we've marked</p> <p>25 as BP-26.</p>

6 (Pages 18 to 21)

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<p>1 MR. MAUER: I'm going to give him 2 this one, and if you want to look on it because it's 3 in color, so it might be a little easier. I'll just 4 give everybody a minute to find it. 5 HEARING OFFICER: Was this not 6 originally part of the submission? 7 MR. MAUER: I think it was on our 8 exhibit list, but we received it late, so that's why 9 it might not be in the notebook. 10 HEARING OFFICER: All right. 11 Proceed. 12 Q. (By Mr. Mauer) Mr. Hutchcraft, do you 13 recognize BP-26? 14 A. Pardon? 15 Q. Do you recognize this document? 16 A. Yes, sir. 17 Q. And it's made up of a cover sheet, and then 18 the next page are some calculations of or listings of 19 NPDES effluent limitations; is that right? 20 A. Yes, sir. 21 Q. Did you prepare this information? 22 A. Yes. I took it off our -- I've got a CD 23 that I keep all the board packets that I get. I just 24 got that the other -- all this information off of it. 25 Q. And then do you have a -- and then behind</p>	<p>1 Q. So there's 1.8 million gallons in each of 2 the two ditches? 3 A. Each of the two ditches, yes, sir. 4 Q. So there's 3.6 million gallons of sewage 5 in -- 6 A. At all times. 7 Q. -- at all times in these two ditches; is 8 that right? 9 A. Yes, sir. 10 Q. All right. I want to try to help us orient 11 where exactly we're at. And I know we've got a 12 better picture coming up, but just for our purposes, 13 this has already been identified as MP-1, which is 14 our overall map, and it shows the Magruder territory 15 and the sewage treatment facility. Do you see that 16 right there? 17 HEARING OFFICER: You need to 18 verbally answer. 19 A. Yes, sir. 20 Q. (By Mr. Mauer) Could you show Mr. Tichenor 21 exactly -- I think we can all see it, but I want to 22 make sure we're clear -- on MP-1 these ditches that 23 we're looking at in the photograph? 24 A. Right here. 25 Q. So even though that's an aerial photograph,</p>
Page 23	Page 25
<p>1 that are several photographs; is that right? 2 A. Yes, sir. 3 Q. And did you take these photographs? 4 A. Yes. 5 Q. All right. Could you turn to the first 6 photograph. And is the first photograph simply a 7 picture of the front of the building? 8 A. Yes. 9 Q. All right. Turn to the next photograph, 10 then, and would you please describe for the Hearing 11 Officer what this photograph depicts? 12 A. Well, you're actually looking at the -- this 13 is our influent building where both Lake Ozark and 14 Osage Beach both raw influent comes into the 15 building. And there's bar screens, which we'll see 16 in the picture later on what the bar screens look 17 like, and the oxidation ditches. You can see in the 18 middle where there's a life preserver. That is the 19 actual split of the tanks. That's the middle that 20 actually separates the two tanks. There's actually 21 1.8 million gallon at all times in them ditches, in 22 each side. 23 Q. So in the two ditches combined or in each 24 ditch? 25 A. Each ditch.</p>	<p>1 MP-1, those ditches are big enough that you can 2 actually see them from the aerial photograph? 3 A. Yes. Yes, sir. 4 Q. All right. Now, from looking at MP-1, the 5 red line are the sewage treatment lines. Can you 6 describe for us how the lines intersect with and come 7 into these ditches, how the sewage gets from the 8 lines into the ditches? 9 A. Well, it actually comes in the side here and 10 goes into the -- through the flumes and goes into the 11 influent structure. 12 Q. Okay. If I'm looking at this photograph on 13 MP-20 that shows the ditches and this house, where in 14 relation to the ditches and this house are those 15 sewer lines actually being connected into here? 16 A. Okay. Well, to the left of that white pipe 17 that is sticking up in the picture you get -- on the 18 far left you'll see a manhole. That is Lake Ozark. 19 Q. Okay. 20 A. And then the right manhole is the 18-inch 21 main for Osage Beach. 22 Q. So -- I'm sorry. Go ahead. 23 A. And then there's a 24-inch main that comes 24 in the side right below the white pipe. 25 Q. Let me do this: I'm going to give you a red</p>

7 (Pages 22 to 25)

1 pen, and would you just write on BP-26, the
2 photograph --

3 HEARING OFFICER: This is going to be
4 the Commission copy.

5 Q. (By Mr. Mauer) Would you just label on that
6 one where the mains come into the sewage treatment
7 system.

8 A. This is Lake Ozark, and this is Osage Beach.
9 Then another line comes in here.

10 HEARING OFFICER: This is the 24-inch
11 line?

12 MR. HUTCHCRAFT: The 24-inch. That's
13 the 18 --

14 HEARING OFFICER: The Hearing Officer
15 is going to provide to both parties.

16 MR. HUTCHCRAFT: That's the 24-inch
17 line that goes in.

18 MR. BROWNLEE: Can we just explain
19 off the record a minute?

20 HEARING OFFICER: Let's go off the
21 record a moment.

22 (Off the record.)

23 HEARING OFFICER: All right. We're
24 back on the record. While we were off the record,
25 each of the parties marked on their copy of Exhibit

1 BP-26 -- or actually Mr. Hutchcraft marked on those
2 exhibits the location of the 24-inch Lake Ozark main,
3 the 18-inch Lake Ozark main and the -- pardon me --
4 the 24-inch Osage Beach main and the 18-inch Osage
5 Beach main and the 12-inch Lake Ozark main and where
6 they enter on the photograph which shows the two
7 ditches which have previously been testified to.
8 Proceed, Mr. Mauer.

9 MR. MAUER: Thank you.

10 Q. (By Mr. Mauer) Mr. Hutchcraft, just so
11 we're clear, if you could refer back to MP-1, the big
12 map. All right? The red line bisecting the Magruder
13 property, which lines are those? This red line here
14 that runs through here, comes down the hill. Are
15 those the Osage Beach lines?

16 A. Yes.

17 Q. All right. Now, where on this -- it's not
18 labeled on this map, but where would be the Lake
19 Ozark line that comes into the sewage treatment plant
20 that you've just identified?

21 A. It comes in out along, I think it's this
22 valley right here, and goes back in town. It comes
23 out the same side. Actually, it's right beside the
24 Osage Beach, but it goes out along the front of the
25 plant and it follows Anderson Road. Well, it

1 actually cuts back down through this valley.

2 Q. All right. So the Lake Ozark line actually
3 runs in front of the plant and then heads back
4 towards the river along the creek which is on the
5 west side of the sewage treatment plant?

6 A. Yes, sir. Exactly.

7 Q. And that's a 12-inch line?

8 A. Yes.

9 Q. Do you know what type of line that is, what
10 type of construction?

11 A. No, I don't.

12 Q. All right. For the job that you do for
13 Alliance, do you -- are you responsible for the pump
14 stations and the lift stations within the City of
15 Osage Beach?

16 A. No.

17 Q. Are you responsible for the lift stations or
18 the pump stations in Lake Ozark?

19 A. No.

20 Q. What are the boundaries of your
21 responsibility?

22 A. It's within the gates, the fence there at
23 the plant.

24 Q. So anything that happens inside the fence is
25 your responsibility?

1 A. Yes, sir.

2 Q. And anything that happens outside is not
3 your responsibility?

4 A. No.

5 Q. All right. So let's start the sewage,
6 then -- we've talked with Mr. King about the sewage
7 coming down the hill into the plant, all right, and I
8 want to follow it through the plant with you. Could
9 you do that for me?

10 A. Yeah.

11 Q. All right. Here's where I want to start:
12 You've shown us where the sewage comes in on this
13 photograph, BP-26. Do you remember?

14 A. Yes.

15 Q. All right. Before we start, at this point
16 when it enters the plant, is the sewage -- has the
17 sewage been treated at all or is it still raw sewage?

18 A. It's raw sewage.

19 Q. If there would be a leak at any point prior
20 to this point, would raw sewage then be discharged
21 and released into the environment?

22 A. Oh, yes.

23 Q. All right. Then let's talk about what might
24 happen once the sewage comes into your plant.

25 MR. BROWNLEE: Your Honor, I'm going

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<p>1 to object to this purely on a relevance basis. This 2 case has nothing to do with how this sewer plant is 3 operated. I mean, we're just -- it's no disrespect 4 to the witness and it's, I guess, interesting, but it 5 just has nothing to do with this permit as to how 6 that sewer plant's operated or what it does once it 7 gets inside the gates of the sewer plant. 8 HEARING OFFICER: Mr. Mauer, response 9 to the objection? 10 MR. MAUER: I disagree. This case is 11 all about this sewage treatment plant. This witness 12 is going to clearly explain for the Hearing Officer 13 and for the Land Rec Commission that if there is 14 damage to this sewage treatment plant, sewage would 15 be discharged. And he's going to explain how this 16 plant was not designed or intended to be in an 17 environment with blasting or quarrying. And the 18 operation of this plant, the sensitive nature of the 19 plant, is very relative and important. 20 HEARING OFFICER: The Hearing Officer 21 is not yet so persuaded the operation of the facility 22 itself is the operation of the facility. 23 Nonetheless, I'm going to grant leeway, and we'll 24 learn all about how sewage flows through a sewage 25 treatment plant.</p>	<p>1 A. Those actually take out any inorganics 2 that -- large inorganics, anything bigger than a 3 quarter of an inch. It takes out the small pieces of 4 plastic, anything that -- rock, you know, anything 5 big that makes it down the line, it actually takes it 6 out and puts it in a tub. 7 Q. So when I drop my wedding ring into the sink 8 and it goes down the sewer, that's where it picks it 9 up? 10 A. That's where it should be, yes. 11 Q. Tell me this: When were those machines 12 installed? 13 A. These were installed in 2002. 14 Q. All right. And were you familiar -- are you 15 familiar with these machines? 16 A. Yes. Yes. 17 Q. Do they require maintenance at all times? 18 A. Oh, yes. 19 Q. When they were installed, to your knowledge, 20 was there any knowledge or plan that they would be 21 operated in an environment near a rock quarry? 22 A. No. No. 23 MR. BROWNLEE: I'm going to object to 24 that as having absolutely no foundation, your Honor. 25 HEARING OFFICER: Sustained.</p>
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<p>1 MR. BROWNLEE: And when we get to the 2 point of him testifying how this plant was 3 constructed and its relationship to blasting. At 4 that point I may renew my objection on his expertise 5 and not having knowledge of any of that. 6 HEARING OFFICER: I'm not foreclosing 7 you, Mr. Brownlee, from objecting at a later time. 8 MR. BROWNLEE: Thank you. 9 HEARING OFFICER: Due to lack of 10 foundation for the witness to so testify. Proceed, 11 Mr. Mauer. 12 MR. MAUER: Thank you. 13 Q. (By Mr. Mauer) Looking at the photograph 14 that you've marked on in BP-26, you've shown us where 15 the sewage comes into the plant. Where does it go? 16 A. It actually goes through two flumes, partial 17 flumes. You can see the lids are kind of open on 18 the -- just right past to the left of the white pipe 19 goes through -- we meter it, and then it goes through 20 bar screens, which there's pictures if you want to 21 look on past. 22 Q. Please show us. 23 A. It goes through the bar screens. It's back 24 next to the last page. 25 Q. All right. And what do those screens do?</p>	<p>1 Q. (By Mr. Mauer) Let's go back, then, to 2 BP -- the photograph that you're showing us as we go 3 through. So after it goes through these screens, 4 then where does the sewage go? 5 A. It actually goes through -- on the very last 6 page, that's called an assist-a-grit system on the 7 very last page. That is a big -- it's about 10 feet 8 deep and it's a big V-shaped concrete tank that the 9 grit actually goes through in a circular motion, and 10 the heavy grit goes to the center and settles out, 11 and then this assist-a-grit system actually picks it 12 up and puts it over into this tub. 13 Q. All right. Now, this system, was that 14 installed in the 1980's when the plant was built? 15 A. Yes. 16 Q. Is it still the same equipment as when it 17 was originally installed? 18 A. Yes. 19 Q. How deep into the ground is this system? 20 A. It's approximately 10 feet. 21 Q. And what is the -- as it's in the ground, 22 what's the system made out of? 23 A. Concrete. 24 Q. Do you know how thick it is? 25 A. I think most of it is 10 inches, 10 to</p>

9 (Pages 30 to 33)

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<p>1 12 inches, that I know of, my knowledge of it.</p> <p>2 Q. So we've got 10 to 12 inches of concrete</p> <p>3 10 feet in the ground?</p> <p>4 A. Yes.</p> <p>5 Q. Are you required to maintain this system to</p> <p>6 make sure that there's no cracks or breaks?</p> <p>7 A. Yeah. We take it down once a year and</p> <p>8 inspect it and make sure everything's fine in the</p> <p>9 concrete and the system itself.</p> <p>10 Q. What would happen to your maintenance or</p> <p>11 your operation if that -- if when you take it down</p> <p>12 you discover that that concrete is cracked?</p> <p>13 A. Well, it would depend on if it was bad</p> <p>14 enough that we'd have seepage coming in or seepage</p> <p>15 going out, we would have to fix it.</p> <p>16 Q. And if there was seepage going out, what</p> <p>17 would be seeping out?</p> <p>18 A. It would be the raw sewage.</p> <p>19 Q. After it goes through this system, where</p> <p>20 does the sewage go next?</p> <p>21 A. It actually goes into the ditches, into the</p> <p>22 raw -- the raw sewage goes into the ditches.</p> <p>23 Q. If you turn four pictures back from the one</p> <p>24 that you marked on, that seems to be a close-up</p> <p>25 photograph of the ditches. Do you see that? I'm</p>	<p>1 Q. Now, what's the red valve that we see in</p> <p>2 that photograph?</p> <p>3 A. That's called a slew valve. It's actually</p> <p>4 if you ever wanted to drain it, it's a valve that</p> <p>5 actually -- it's got little mounts that mount on the</p> <p>6 side of the concrete that goes to the bottom, and</p> <p>7 it's actually just like a plunger valve that seats</p> <p>8 into a base, and that's what the valve is for is for</p> <p>9 cleaning out your aeration basin if you ever have to.</p> <p>10 Q. And how deep are these aeration ditches that</p> <p>11 we're looking at here?</p> <p>12 A. From the top of the concrete right there,</p> <p>13 you're looking at approximately 15 feet.</p> <p>14 Q. So 15 feet deep into the ground?</p> <p>15 A. Yes.</p> <p>16 Q. And how deep is the water, then, that we're</p> <p>17 looking at in this photograph?</p> <p>18 A. You're looking at probably 13, 12 to 13 feet</p> <p>19 deep.</p> <p>20 Q. Of sewage?</p> <p>21 A. Of the water, yeah.</p> <p>22 Q. This drain, if you needed to, if one of</p> <p>23 these ditches developed a crack and there was seepage</p> <p>24 of sewage out, what would you have to do?</p> <p>25 A. We'd have to drain it and fix it.</p>
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<p>1 looking at this one.</p> <p>2 A. Yeah. Yes.</p> <p>3 Q. It looks like there's some turbulence there</p> <p>4 on the right side. What is that?</p> <p>5 A. That is the turbulence from the aerators.</p> <p>6 We've got -- they're like a paddle that keeps the</p> <p>7 ditches all mixed up, keeps the dissolved oxygen at</p> <p>8 the right level.</p> <p>9 Q. Okay. And as I look at this photograph, I</p> <p>10 see one, two, three, four ditches. Is that right?</p> <p>11 Is that one-half, then, of the system?</p> <p>12 A. Yes.</p> <p>13 Q. And how much sewage is in these four</p> <p>14 ditches?</p> <p>15 A. Well, actually, that would -- I'm missing.</p> <p>16 There's two more. There will be actually six. There</p> <p>17 are actually three aerators per ditch. You're only</p> <p>18 seeing two.</p> <p>19 Q. And in the six ditches, how much sewage is</p> <p>20 in there?</p> <p>21 A. In each ditch there's 1.8 million gallons.</p> <p>22 Q. So in this picture that we are looking at</p> <p>23 plus the two we can't see, there would be 1.6 million</p> <p>24 gallons of sewage; is that right?</p> <p>25 A. Yes, 1.8.</p>	<p>1 Q. And how long would it take you to drain the</p> <p>2 3.6 million gallons?</p> <p>3 A. Well, you'd have to de-water your sludge.</p> <p>4 You're actually looking at mixed liquor. And then</p> <p>5 you would have to de-water and pump it with a 6-inch</p> <p>6 pump, probably, to get it all out. You wouldn't be</p> <p>7 able to get it all out these slew gates, you would</p> <p>8 have to get it pumped in. And you're probably</p> <p>9 looking at three or four days.</p> <p>10 Q. Just to drain it?</p> <p>11 A. Just to drain it.</p> <p>12 Q. And would there be any way -- if there was</p> <p>13 sewage leaking because of a crack in this basin,</p> <p>14 would there be any way to stop the leak while you're</p> <p>15 draining it?</p> <p>16 A. No.</p> <p>17 Q. All right. So best case scenario, if one of</p> <p>18 these basins gets cracked, you're going to have a</p> <p>19 leak for at least three or four days?</p> <p>20 A. Yeah, probably before you even notice it,</p> <p>21 because of the amount of water.</p> <p>22 Q. And why is that? Can you explain that for</p> <p>23 the Hearing Officer?</p> <p>24 A. Well, you've just got that much more --</p> <p>25 you've got, you know, like a million and a half</p>

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<p>1 gallons of water that's coming in every day that's</p> <p>2 actually on top of this water here. So you're</p> <p>3 already replacing what you're taking out. You treat</p> <p>4 1.5 million, you might as well -- you've got 1.5</p> <p>5 million coming in, so you've constantly got water --</p> <p>6 the same amount of water all the time. You never</p> <p>7 have one a little bit -- you know, these are always</p> <p>8 at 1.8 million gallon.</p> <p>9 Q. I want to go back, then, to make sure we're</p> <p>10 all clearly understanding. If a crack developed and</p> <p>11 sewage was leaking out of one of these basins, how</p> <p>12 long do you think it would take before you would even</p> <p>13 discover that there was a leak?</p> <p>14 A. Probably three to four days.</p> <p>15 Q. The valve that we're looking at in this</p> <p>16 picture, when was that valve installed?</p> <p>17 A. 1985.</p> <p>18 Q. Do you have concerns about the ability of</p> <p>19 that valve and other equipment at your plant to stand</p> <p>20 up in a -- and last in an environment close to</p> <p>21 blasting and quarrying?</p> <p>22 A. Oh, yes. Yeah.</p> <p>23 Q. And what would those concerns be?</p> <p>24 A. Well, it's all old. All the equipment is</p> <p>25 old, and it -- the main thing is if these valves</p>	<p>1 send it to the other ditch and it would overload the</p> <p>2 other ditch. It would actually double our mixed</p> <p>3 liquor amount. It would cause us some major</p> <p>4 operation problems.</p> <p>5 Q. You keep calling this mixed liquor. Can you</p> <p>6 tell us what you mean by that?</p> <p>7 A. Well, it's a -- actually, it's all natural.</p> <p>8 This stuff comes out of our body, everything you're</p> <p>9 looking at here. It's microorganisms and it's just</p> <p>10 a -- it's just putting everything back into natural</p> <p>11 form, you know, the process does, the bugs, the</p> <p>12 microorganisms and everything puts it back to a soil.</p> <p>13 Mixed liquor, we actually try to keep our mixed</p> <p>14 liquor at a certain level. That way everything runs</p> <p>15 fine, the clarifiers run fine, but it actually puts</p> <p>16 the -- converts it to a reusable material.</p> <p>17 Q. Okay. Are there other -- you've told us</p> <p>18 about what might happen with this valve just as an</p> <p>19 example. Are there other equipment or systems,</p> <p>20 pieces of the operation of the sewage treatment</p> <p>21 plant, that give you concern being in close proximity</p> <p>22 to blasting or quarry operation?</p> <p>23 A. Yeah. We've got lift stations that -- we've</p> <p>24 got lift station that's 35-foot deep. That would be</p> <p>25 a concern. We've got piping, you know, that deep,</p>
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<p>1 here -- it actually just seats down in a seat. It's</p> <p>2 not an enclosed valve or anything. It's just a</p> <p>3 plunge-like thing. You can imagine just a toilet</p> <p>4 plunger over a hole. And if a little bit of</p> <p>5 vibration knocked that off seat, there's a leak right</p> <p>6 there. We would notice that right off the bat</p> <p>7 because that actually goes to one of our lift</p> <p>8 stations.</p> <p>9 Q. And what would you have to do if that seat</p> <p>10 and valve gets damaged?</p> <p>11 A. You would have to drain the tank to even get</p> <p>12 in and look and see what the problem was. You would</p> <p>13 have to drain it completely.</p> <p>14 Q. All right. And how long would it take you</p> <p>15 to just typically drain the tank as compared to</p> <p>16 bringing in pumpers and pumping it out for leak</p> <p>17 purposes?</p> <p>18 A. Well, typically you're only looking at --</p> <p>19 that's only a 6-inch hole -- a 6-inch valve, and it's</p> <p>20 going to take awhile to get 1.8 million gallon of</p> <p>21 mixed liquor out. You're probably looking at a</p> <p>22 couple of days anyway of just about 24 hours a day.</p> <p>23 Q. And where would you -- what would you do</p> <p>24 with that 1.8 million gallons?</p> <p>25 A. It would overload the -- we could actually</p>	<p>1 the drain, the plant drain. You know, we've got an</p> <p>2 underground Raz building that's completely</p> <p>3 underground which actually returns the activated</p> <p>4 sludge back into the main part of the system. And</p> <p>5 the UV system that we just installed this past year,</p> <p>6 you can look at some of the pictures. You know,</p> <p>7 clarifiers... Clarifiers would be a concern because</p> <p>8 of the dust. Electric motors would be a concern.</p> <p>9 Q. We'll go through those. Let's go back to</p> <p>10 the picture that you wrote on. Okay? Do you see</p> <p>11 that one?</p> <p>12 A. (Nods.)</p> <p>13 Q. I want to go to the next photograph. What</p> <p>14 does that photograph show us, Mr. Hutchcraft?</p> <p>15 A. It's actually the ditches again, and then</p> <p>16 also over the hill you can see our two digesters.</p> <p>17 That's where we send the excess mixed liquor when we</p> <p>18 start reaching a certain level. We try to keep it</p> <p>19 below that level, and then we actually send the mixed</p> <p>20 liquor over the hill and actually digest it further.</p> <p>21 Q. And that's in those two basins that we see</p> <p>22 at the top of the photo?</p> <p>23 A. That's the two basins, yeah.</p> <p>24 Q. Now, after those two basins, if those two</p> <p>25 basins are full because you've had a drainage problem</p>

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<p>1 or, like you described, or you've just got too much 2 for some reason, if you had an overflow from those 3 detention basins, where would the sewage go? 4 A. It would go into the stream. 5 Q. And where do those streams run? 6 A. You got one stream on both sides. It's 7 Bowling Hollow Creek, and then I don't know if 8 this -- the other side is even named, but Bowling 9 Hollow Creek would go into the main river. 10 Q. Okay. The next photograph, there is a 11 little structure that almost looks like a little 12 triangle. Do you see that? 13 A. Yes. 14 Q. Can you describe for the Hearing Officer 15 what that little structure is? 16 A. That is the return activated sludge 17 building. That's where our Raz pumps are located, 18 and it's approximately I'd say 15 to 20 feet deep. 19 And the pumps are actually down in the basement. 20 Q. Is there anything in that building other -- 21 that we can see other than a stairway? 22 A. You've got a stairwell and then you've got a 23 big electrical panel. I think I've got a picture of 24 the electrical panel. That's five pages back. You 25 see the electrical panel, it's got a lock-out</p>	<p>1 HEARING OFFICER: When was this plant 2 built? 3 MR. MAUER: 1985 to 1987, I believe. 4 HEARING OFFICER: Evidence on the 5 record is that Mr. Hutchcraft did not have contact 6 with this until 2002, so on its face he was not part 7 of the construction of the plant. 8 MR. MAUER: That doesn't mean he 9 wouldn't have knowledge somehow. I didn't even know 10 if the answer is yes, your Honor. The question 11 simply was do you know. 12 HEARING OFFICER: I'll overrule the 13 objection and let us explore this further. The 14 Hearing Officer has yet to be persuaded that this 15 witness has any expertise relative to rendering an 16 opinion on the construction of this facility to 17 withstand earthquakes or blasting. You can answer 18 the question. 19 Q. (By Mr. Mauer) Do you remember my question, 20 Mr. Hutchcraft? 21 A. Pardon? 22 Q. Do you remember my question? 23 A. Yes. 24 Q. Do you know? 25 A. No, not really.</p>
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<p>1 tag-out. That's the actual electrical panel, the 2 main electrical panel in the Raz room. 3 Q. And is that panel above ground or below 4 ground? 5 A. Below ground. 6 Q. What are the walls of this Raz room made out 7 of? 8 A. Concrete. 9 Q. Do you know how thick? 10 A. No, I don't. 11 Q. Do you know if they were designed to be an 12 environment to withstand blasting? 13 MR. BROWNEE: Objection, your Honor. 14 Again absolutely no foundation this witness can 15 testify to the design of the building as it relates 16 to blasting. 17 MR. MAUER: Your Honor, my question 18 simply was does he know. If he can answer that, then 19 we can find out how he knows. I didn't ask him what 20 it was or -- I simply asked does he know if it was 21 designed. It's a yes or no question if he knows. 22 HEARING OFFICER: And how would he 23 have this knowledge? 24 MR. MAUER: I'll find out if he 25 knows. I don't know if he does.</p>	<p>1 Q. Okay, then. This Raz house, do you know how 2 deep underground it is? 3 A. It's approximately 15 feet to the floor. 4 Q. And what's contained in it besides this 5 electrical panel? 6 A. There's five Raz pumps that sit up on 7 stands, and the piping, all the piping comes from the 8 clarifiers into the Raz basin, and then it goes over 9 to the head works building, the main influent 10 building. 11 Q. Are these pumps and piping, are they all 12 original from when it was constructed? 13 A. Yes. 14 Q. Still looking at that picture, to the left 15 of the building, the little triangle building, the 16 Raz building, are two circular structures. Do you 17 see those? 18 A. Yes. 19 Q. Can you tell the Hearing Officer what those 20 are? 21 A. They are the two original clarifiers, 22 55-foot IMCO clarifiers. 23 Q. IMCO? 24 A. IMCO. 25 Q. What does that mean?</p>

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<p>1 A. That's the brand.</p> <p>2 Q. Okay. And 55-foot, what does that mean?</p> <p>3 A. That they're 55 foot across.</p> <p>4 Q. And how deep are they?</p> <p>5 A. 17 feet in the center.</p> <p>6 Q. So they are 17 feet deep into the ground?</p> <p>7 A. Yes.</p> <p>8 Q. And how much liquid is contained in those?</p> <p>9 A. Right off the top of my head, I think it's</p> <p>10 80-some thousand gallon.</p> <p>11 Q. And there are two of those?</p> <p>12 A. Yes.</p> <p>13 Q. In the process -- what is in those? Is it</p> <p>14 treated sewage, raw sewage, being treated sewage?</p> <p>15 A. That's actually the mixed liquor that is</p> <p>16 thrown from -- if you can look on the end of each</p> <p>17 ditch, you'll see two big gates, and these gates the</p> <p>18 actual mixed liquor comes in and goes through a</p> <p>19 splitter box that's right in front of the A frame,</p> <p>20 and that's where we make our decision how much flow</p> <p>21 we want to go in each clarifier.</p> <p>22 Q. Okay. And in looking at -- just to the left</p> <p>23 of those two clarifier ditches there's another</p> <p>24 structure. What's that that we just see a piece of?</p> <p>25 A. That's a Clarifier 3.</p>	<p>1 A. Yes.</p> <p>2 Q. Thank you. Now, still looking at that</p> <p>3 photograph, I see a building in the middle of the</p> <p>4 photograph. Can you tell us what that structure is?</p> <p>5 A. That is the disinfection building. That's</p> <p>6 where our new UV system is installed, the main</p> <p>7 controls.</p> <p>8 Q. Can you describe for the Hearing Officer</p> <p>9 what that UV system is?</p> <p>10 A. It's actually the... We used to chlorinate,</p> <p>11 and we converted to UV this last year. And there's a</p> <p>12 picture of the UV system, the panel, that is the</p> <p>13 panel within the building, and that is the control</p> <p>14 center that controls the UV itself.</p> <p>15 Q. And then the next -- so the photograph</p> <p>16 you've just identified is the one with two big metal</p> <p>17 doors and what looks like a little printout screen in</p> <p>18 the middle of one door?</p> <p>19 A. Yes.</p> <p>20 Q. And the next photograph, what does that</p> <p>21 show?</p> <p>22 A. That's actually the same panel opened up. I</p> <p>23 just wanted to show all the electronics. And these</p> <p>24 are what you're looking at here are ballasts for each</p> <p>25 UV bulb. You've got a ballast for -- one bulb, you</p>
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<p>1 Q. And how big is that?</p> <p>2 A. It's 70 -- like, 78 feet across.</p> <p>3 Q. And how deep?</p> <p>4 A. The middle, I think that one there is close</p> <p>5 to 19 feet in the middle.</p> <p>6 Q. So it's 19 feet into the ground?</p> <p>7 A. Yeah.</p> <p>8 Q. Do you know how many gallons that holds?</p> <p>9 A. Like, 170,000. It's quite a bit bigger</p> <p>10 than...</p> <p>11 Q. If one of these clarifier tanks ruptured and</p> <p>12 leaked the liquid that is inside, would that be a</p> <p>13 treated product so it wouldn't cause an environmental</p> <p>14 problem, or has it not yet been treated -- completed</p> <p>15 the treatment process?</p> <p>16 A. Well, that is actually the secondary.</p> <p>17 You're actually getting your effluent off the top of</p> <p>18 these clarifiers, but it does have mixed liquor in</p> <p>19 the bottom.</p> <p>20 Q. Okay. So for a non-sewer man like me, if we</p> <p>21 had a break and fluid seeped out of and leaked out of</p> <p>22 one of these clarifiers, would that be an</p> <p>23 environmental contamination or not?</p> <p>24 A. Yes.</p> <p>25 Q. It would be?</p>	<p>1 know, for each bulb -- ballast.</p> <p>2 Q. And what's the next photograph show?</p> <p>3 A. That's actually kind of an overshoot of where</p> <p>4 the UV lamps are. This used to be the chlorine</p> <p>5 content chamber. This is 20 feet deep. And what</p> <p>6 this is, it's got piping, drains and everything down</p> <p>7 in this vault, and it's actually got some valves,</p> <p>8 just like some slew valves, in that same pit, the</p> <p>9 same type of valve that's in the other aeration basin</p> <p>10 that we talked about earlier, in the same area, but</p> <p>11 this is actually just an overshoot of where the</p> <p>12 modulars are actually sitting down in the water.</p> <p>13 Q. And this building and structure is 20 feet</p> <p>14 deep into the ground?</p> <p>15 A. Yes.</p> <p>16 Q. Can you tell us, now, what does this UV</p> <p>17 system do?</p> <p>18 A. It actually disinfects. It doesn't kill the</p> <p>19 organism. It actually sterilizes them, sterilizes</p> <p>20 them to where they can't reproduce and create fecal</p> <p>21 matter. It doesn't actually kill it like chlorine</p> <p>22 used to.</p> <p>23 Q. And you mentioned the treatment plant used</p> <p>24 to use chlorine?</p> <p>25 A. Yes.</p>

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<p>1 Q. And why did the treatment plant change from 2 chlorine to UV? 3 A. Mainly... Well, we -- the Department of 4 Natural Resources kind of gave us an ultimatum. They 5 said we either had to de-chlor -- and what they did 6 was drop our permit limit. We had a limit of 1, and 7 then they dropped it down to .019, and we couldn't -- 8 they did a study and they actually seen it would be 9 cost-effective to do the UV over chlorination and 10 then de-chlor it. You're actually using two 11 chemicals, one chemical to disinfect and the other 12 one to de-chlor it. So the Board decided to go with 13 this option, and that's why they decided -- and it's 14 better for the environment. 15 Q. Do you know how much this system, UV system, 16 cost? 17 A. It was right around 500,000. 18 Q. And the system, then, after it's -- after we 19 leave this UV system, where does the effluent go? 20 A. Actually goes into -- goes down some cascade 21 aerations, then it goes into Bowling Hollow Creek and 22 then it goes into the Osage River. 23 Q. Okay. So as I look at this photograph, 24 which is the top shot, I see a fence there running 25 across. Is that the boundary of the sewage treatment</p>	<p>1 A. They're 13 feet. 2 Q. And what are they made out of? 3 A. Concrete. 4 Q. All right. The next picture we looked at, 5 that's the one that shows the A frame structure, 6 right? 7 A. Yes. 8 Q. Now, the two basins that are immediately to 9 the left of the A frame structure, what are those 10 basins made out of? 11 A. Concrete. 12 Q. Do you know how thick? 13 A. I think they're close to 16 inches. 14 Q. The next picture we looked at was the valve, 15 right? 16 A. Yep. 17 Q. This next picture, does that show the large 18 clarifier that you were describing before? 19 A. Yes. 20 Q. And do you know what that clarifier is made 21 out of? 22 A. Concrete. 23 Q. Do you know how thick? 24 A. It's approximately the same thing, right 25 around 16 inches.</p>
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<p>1 plant? 2 A. Yes. 3 Q. So this is the last stop? We've taken the 4 sewage all the way through to where it's now clean 5 water and being sent out the system; is that right? 6 A. Yes. 7 Q. All right. I want to look at a few more of 8 these photographs, if you can go back to the first 9 one. We already talked about that. That's just a 10 front to the building, right? 11 A. Yes. 12 Q. All right. And the next one is the one you 13 marked on showing where the lines come in, correct? 14 A. Yes. 15 Q. The next one is the aerial view showing all 16 of the two basins, right? 17 A. Yes. 18 Q. Now, before we turn, you told me about the 19 amount of sewage in the two ditches. How much are in 20 these two overflows that we -- basins, the circular 21 ones that we see in the middle of that picture, the 22 far end of the sewage treatment plant? 23 A. Them are 73 feet across, and if I remember 24 right, they -- I think it's 130, 40,000. 25 Q. Do you remember how deep they are?</p>	<p>1 Q. The next picture, is that a close-up view of 2 the two overflow basins that are at the far back of 3 the sewage treatment plant? 4 A. Digesters, yes. 5 Q. The next picture shows a manhole cover and 6 looks like some tracks. What does that show? 7 A. That's actually the last manhole of the new 8 24-inch main that -- just before it comes up to -- 9 inside the gate. 10 Q. All right. Now, I have a question for you. 11 When you're out at the sewage treatment plant, do you 12 have occasion to go down to the corner there that 13 we're looking at and be able to see where the lines 14 go? 15 A. Yes. 16 Q. I mean, have you ever done that? 17 A. Oh, yeah. Yes. 18 Q. Now, is there any sort of road that runs 19 over the top of those lines? Is there a paved road 20 or some sort of gravel road or anything like that? 21 A. No. It's just a -- kind of a path. 22 Q. Is there any sort of routine traffic running 23 over top of those lines? 24 A. No. 25 Q. Have you ever seen a large earth mover or</p>

14 (Pages 50 to 53)

1 big piece of equipment driving over top of those
2 lines?

3 A. No.

4 Q. The next photograph, that's the electric
5 panel that you described earlier?

6 A. Yes.

7 Q. And how deep in the ground is this electric
8 panel?

9 A. Approximately 15 feet.

10 Q. The next panel is in the UV building?

11 A. Yes.

12 Q. And then we have the UV panel?

13 A. (Nods.)

14 Q. Now, you were there at the sewage treatment
15 plant when this system was designed and installed?

16 A. Yes.

17 Q. When it was designed and installed, was
18 there any contemplation that there may be a rock
19 quarry operated in close proximity to this system?

20 MR. BROWNLEE: Your Honor, I'm going
21 to object again. He's had no foundation that he has
22 anything to do with the design of this as it would
23 relate in any way to blasting or the operation of a
24 rock quarry.

25 HEARING OFFICER: Overruled. The

1 question is whether when it was installed there was
2 any contemplation.

3 A. No.

4 Q. (By Mr. Mauer) There was not?

5 A. No.

6 Q. Do you know if the system was placed on any
7 sort of pad or vibration-sensitive placement so that
8 it would be protected from any sort of movement?

9 A. No.

10 Q. It was not?

11 A. No.

12 Q. The next picture we see is the top shot of
13 the UV building, right?

14 A. That's the UV system, yes.

15 Q. And then what's the next photograph?

16 A. This is actually the main control room over
17 in the head Works building. This is actually
18 electrical panels 1 thru 6 aerators and then some
19 other control panels. Down the far -- you can see a
20 big black breaker at the very far end. That was a
21 \$30,000 breaker here just a few years ago.

22 Q. And why was that?

23 A. We had to replace it.

24 Q. How old is this electrical system that we're
25 looking at in this photograph?

1 A. What you're looking at right there, the
2 majority of it's 20 years old, plus.

3 Q. Do you have concerns about the ability of
4 the electrical system of the plant to be able to
5 stand up and function in an environment close to a
6 quarry?

7 A. Oh, yes.

8 Q. What would those concerns be?

9 A. Well, the vibration, the dust. You know,
10 you've got all kinds of, you know, electrical -- that
11 thing is just full of electrical components, relays.
12 If one of them relays went out and we weren't there,
13 you know, the vibration would just cause -- all them
14 aerators go out at one time, that's a violation of
15 the permit. So if we weren't there and we came in
16 the next morning and everything's shut off, we would
17 be in a safety violation.

18 Q. Before we leave this, I want to ask you, you
19 said if we weren't there. What are the hours of the
20 operation of the sewage treatment plant?

21 A. 7:30 to 4:00.

22 Q. And how many days a week?

23 A. Well, actually 7:30 to 4:00 five days a week
24 and then four hours a day on the weekends.

25 Q. And what are those hours on the weekends?

1 A. 7:30 to 11:30.

2 Q. And what about holidays?

3 A. Same.

4 Q. 7:30 to 11:30?

5 A. Same.

6 Q. So if one of these breakers went off line,
7 something happened at 5:00 in the evening, how long
8 would it be until someone might discover that?

9 A. Well, we've got it set up on an auto dialer
10 system. Anytime the electrical, you know, goes out,
11 it automatically calls our cell phones and we're
12 there within an hour, you know, to double check to
13 see what's going on.

14 Q. So you have designed systems to try and
15 prevent back-ups or problems; is that right? I mean,
16 you've got some sort of a --

17 A. Yeah. Somewhat, yeah.

18 Q. Are those systems foolproof?

19 A. No. No. Telephone.

20 Q. What's the next photograph that we see?

21 A. That is the return activated actuator valve.
22 Actually, this is being pumped back from the
23 clarifiers, and it comes back through these valves.
24 These are electric valves, and we just had them
25 rebuilt. And we -- the piping goes back. That's

1 actually bringing return activated sludge back into
2 your ditches, actually bringing food and
3 microorganisms back to your raw sewage to make sure
4 everything gets broke down properly.

5 Q. All right. Now, you mentioned these valves
6 were rebuilt. Did I understand that correctly?

7 A. Yes.

8 Q. How often do you have to do that?

9 A. We've just done it that one time. That's
10 it.

11 Q. And is it -- why was it necessary to rebuild
12 this equipment?

13 A. Wear. Wear and tear.

14 Q. Because of the age of the --

15 A. Age, yeah. Age of the equipment.

16 Q. All right. We already talked about the next
17 picture and the last two pictures. So have we
18 covered all of the pictures that you've -- that you
19 took for us?

20 A. Yes.

21 Q. All right. You mentioned that Alliance has
22 other wastewater operations besides this one. Do you
23 remember that?

24 A. Yes.

25 Q. Are you aware of any other wastewater system

1 operated by Alliance that is in close proximity to a
2 rock quarry operation?

3 A. No, I'm not.

4 Q. The facility -- the sewage treatment
5 facility, what is the actual capacity for the
6 facility?

7 A. Its design is 2.4. The capacity is 3 MGD.

8 Q. And yesterday we heard just a little bit
9 about peak. Can you describe for us what peaking
10 means for purposes of your sewage system?

11 A. Well, peak hourly flow, it -- we don't get
12 consistent flow at all times, and we may, say,
13 one hour -- say, five minutes out of the hour we may
14 hit 5 million, but then it comes back down to the
15 normal flow after that peak. It will hit a peak,
16 then it will come back down to that normal flow. But
17 you'll always have an hourly -- it will always pop up
18 a little higher than normal.

19 Q. Do you have to design your system to handle
20 this peak hourly flow?

21 A. Yes.

22 Q. And why is that?

23 A. Well, for one thing, the Department of
24 Natural Resources requires that. You've got to have,
25 you know, on their design specs, but you've got to be

1 able to take care of any rain events or anything like
2 that that they -- or any type of flow that they send
3 you pretty well. But it's mainly because the
4 Department of Natural Resources requires you to have
5 a peak.

6 Q. Is there discussion of expanding the sewage
7 treatment plant?

8 A. Yes, there has been.

9 Q. And why is that?

10 A. That's -- well, growth, population growth.
11 We're getting, you know, pretty close to maximum
12 capacity in the mid summer.

13 Q. And if the sewage treatment plant was going
14 to expand, the discussions that you've participated
15 in or heard, which way would the sewage treatment
16 plant expand?

17 A. The only way they could would be towards the
18 hill there, the bluff where it's right beside us, you
19 know, unless they had other property.

20 Q. The only property available now is directly
21 to the south of the plant?

22 A. As far as I know.

23 Q. And that's where the big high wall exists
24 now?

25 A. Yes.

1 Q. Would that be actually moving, then, closer
2 to where the rock quarry is proposed to be located?

3 A. Yes.

4 Q. I want to talk about the operation of --
5 well, here, let me go back first. Let me show you
6 what's been marked --

7 MR. MAUER: It's BP-16, your Honor.

8 HEARING OFFICER: BP-16?

9 MR. MAUER: Yes.

10 HEARING OFFICER: BP-16. Proceed.

11 Q. (By Mr. Mauer) Do you recognize BP-16 as
12 two letters, one dated March 31st, 2005, and another
13 dated March 19th, 2005?

14 A. Yes.

15 Q. And were you in Osage Beach at the sewage
16 treatment plant during this time?

17 A. Yes.

18 Q. If we start with the March 19th letter, it
19 appears to be a letter from the City of Osage Beach
20 to the Water Protection Program of the Missouri
21 Department of Natural Resources. Do you see that?

22 A. Yes.

23 Q. Can you tell the Hearing Commissioner what
24 was occurring in and around March 19th, 2005, that
25 preceded the preparation and sending of this letter?

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<p>1 A. Preceded it?</p> <p>2 Q. Well, what was going on such that this</p> <p>3 letter was prepared and sent to the DNR?</p> <p>4 A. They were making the decision on whether to</p> <p>5 go with UV or just the regular chlorine.</p> <p>6 Q. Did you have an understanding of what sort</p> <p>7 of actual damage might occur or what the</p> <p>8 environmental concerns were about the chlorine?</p> <p>9 A. Well, as far as an operator standpoint,</p> <p>10 chlorine is dangerous. And, you know, you've got a</p> <p>11 lot of risk involved with the chlorine to where you</p> <p>12 don't with UV. You know, the odor and the -- well,</p> <p>13 if you get hit with the chlorine hard enough, it will</p> <p>14 kill you.</p> <p>15 Q. You as an operator, as a person?</p> <p>16 A. Yeah.</p> <p>17 Q. What about the chlorine as it's being used</p> <p>18 as a -- as part of the treatment process and how it</p> <p>19 might go into -- ultimately into the stream or the</p> <p>20 river?</p> <p>21 A. Well, it -- we had to keep it at a certain</p> <p>22 level, you know, to keep it from hurting too much</p> <p>23 down stream. That's why they decided to go with the</p> <p>24 UV is because of the hazard.</p> <p>25 Q. Okay. During the time that the sewage</p>	<p>1 MR. BROWNLEE: What about the lady</p> <p>2 who just came in? Is she a Sunrise Beach witness?</p> <p>3 MR. MAUER: I don't know who she is.</p> <p>4 HEARING OFFICER: Wait just a moment.</p> <p>5 Ma'am, would you stand up, please. Would you state</p> <p>6 your name, please.</p> <p>7 MS. MEYER: My name is Judy Meyer.</p> <p>8 HEARING OFFICER: Are you here to</p> <p>9 testify?</p> <p>10 MS. MEYER: No. I'm just here to</p> <p>11 observe.</p> <p>12 HEARING OFFICER: You've not been</p> <p>13 called to testify by any party in this proceeding?</p> <p>14 MS. MEYER: No.</p> <p>15 HEARING OFFICER: Thank You. You may</p> <p>16 be seated. All right. Proceed.</p> <p>17 Q. (By Mr. Mauer) If you'd look at the first</p> <p>18 page of BP-16, I just want to ask, is this the letter</p> <p>19 that DNR sent back to the Joint Sewer Board</p> <p>20 explaining why you needed to change from the current</p> <p>21 chlorine process?</p> <p>22 A. Yes.</p> <p>23 Q. If you look at the third paragraph that</p> <p>24 begins "The low level of chlorine residual," did you</p> <p>25 see that?</p>
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<p>1 treatment plant utilized chlorine, are you aware of</p> <p>2 any sort of environmental problem that occurred, any</p> <p>3 sort of fish kill, any sort of danger or damage that</p> <p>4 actually occurred as a result of chlorine being in</p> <p>5 the discharged effluent?</p> <p>6 A. No, sir.</p> <p>7 Q. But despite no occurrence of actual damage,</p> <p>8 you were still required by DNR to drop the chlorine</p> <p>9 emission?</p> <p>10 A. Yes.</p> <p>11 Q. And basically the new emission level was set</p> <p>12 so low that, what, you couldn't make it work?</p> <p>13 A. Well, we couldn't pass our test. We</p> <p>14 couldn't pass our fecal test at that rate. We would</p> <p>15 have to use another sulfur dioxide or whatever they</p> <p>16 decided to go with to take the chlorine out to meet</p> <p>17 that 0.19 limit.</p> <p>18 MR. BROWNLEE: Your Honor, is this a</p> <p>19 witness? Could you see who this person is?</p> <p>20 HEARING OFFICER: Has your other</p> <p>21 witness arrived, Mr. Mauer?</p> <p>22 MR. MAUER: I don't see Mr. Gognan.</p> <p>23 HEARING OFFICER: The lady that just</p> <p>24 came in is not -- oh, it's a Mr. Okay.</p> <p>25 MR. MAUER: No.</p>	<p>1 A. Yes.</p> <p>2 Q. The second line begins in the middle, "While</p> <p>3 only the acute toxicity standards directly apply in</p> <p>4 such situation for chlorine, that number is still</p> <p>5 very small in order to protect aquatic life. Some</p> <p>6 species are affected by very small concentrations of</p> <p>7 chlorine." Do you see where I read that?</p> <p>8 A. Yes.</p> <p>9 Q. Was it your understanding that the DNR was</p> <p>10 very concerned about the aquatic life in the stream</p> <p>11 and the river that the sewage treatment plan</p> <p>12 discharged?</p> <p>13 A. Yes.</p> <p>14 Q. And is that why they made the sewage</p> <p>15 treatment plant change to some other system?</p> <p>16 A. Yes.</p> <p>17 Q. And how much did it cost ultimately to make</p> <p>18 that change?</p> <p>19 A. It was right at 500,000.</p> <p>20 Q. I want to talk about the operation of the</p> <p>21 system. While you have been -- during the time that</p> <p>22 you've been the manager, are you aware of any actual</p> <p>23 discharges from the sewage treatment plant of sewage?</p> <p>24 A. No.</p> <p>25 Q. Are you aware of any notices of violations</p>

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<p>1 received for actual discharges from the sewage 2 treatment system? 3 A. From the time I have been manager, no. 4 Q. All right. And that began at what time? 5 2004? 6 A. 2004. January of 2004. 7 Q. All right. Now, prior to becoming manager, 8 are you aware of and do you have knowledge of actual 9 violations, notices of violations, that were 10 submitted? 11 A. No, sir. 12 Q. All right. Have you prepared some 13 information for us showing the effluence of the plant 14 from 1999 forward? 15 A. Yes. 16 Q. All right. If you'd turn to BP-26, and 17 beginning on the second page, I'd like you to explain 18 to the Hearing Officer what this information that 19 you've prepared shows. 20 A. This actually shows at the top of the page, 21 it actually shows our limits. And that is the limits 22 that the Department of Natural Resources has set for 23 us. And this is the actual results that was turned 24 in. 25 Q. All right. So let's go through that for a</p>	<p>1 effluent. That's the point for the UV system. 2 HEARING OFFICER: Mr. Mauer, the 3 Hearing Officer is well-aware that if the 24 or the 4 18-inch mains break or if the plant itself suffers an 5 event and discharges raw sewage into the Osage River 6 that's not anything that DNR wants. And I don't 7 think we need to find out whatever the standards 8 would be. I think basic common knowledge of anyone 9 would understand that. 10 MR. MAUER: That was the chlorine. 11 That was the part of the change from the chlorine to 12 the UV. This portion, your Honor, I believe that the 13 Magruder applicants are going to try and assert that 14 there have been discharges from the sewage treatment 15 system. 16 HEARING OFFICER: Let me just address 17 that right now. It's irrelevant. And if Magruder 18 wishes to try to introduce evidence to that effect, 19 I'm sure that you're going to be objecting to it, and 20 even if you aren't, I'm going to as I'm doing right 21 now with you, I'm going to have Magruder establish 22 for me what's the relevance that this facility has 23 had discharges into the Osage River. It is totally 24 irrelevant. 25 MR. BROWNLEE: And I will add, we</p>
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<p>1 minute. 2 HEARING OFFICER: Excuse me, 3 Mr. Mauer. You've completely lost the Hearing 4 Officer. I've extended to you an indulgence of 5 explaining this sewer system far beyond what I 6 thought was necessary. I have done so because I 7 wanted to ensure that maybe there was something that 8 really tied into the relevance of the safety of the 9 plant, which is of course the Joint Board's burden of 10 proof. I am at a total loss as to what we have just 11 covered about switching to chlorine and what we are 12 apparently going to go into detail now about the 13 ratings and the standards that this plant has met. I 14 can find no relevance to this proceeding. I'll allow 15 you an opportunity to explain to me. 16 MR. MAUER: Sure. Two things. The 17 chlorine is important, your Honor, because the DNR 18 has taken the position that the streams near the 19 sewage treatment plant and the Osage River at our 20 discharge point is a pristine area, and therefore we 21 are going to compare that to what would happen if 22 there is a break or a discharge of actual effluent 23 coming out of the sewage treatment plant or the 24 lines. They have put an incredible standard on the 25 sewage treatment plant for the cleanliness of the</p>	<p>1 don't have any evidence of any NOV's issued to this 2 plant. The NOV's that we have knowledge of which are 3 a matter of public record involve Lake Ozark and I 4 think one with the City of Osage Beach, and I don't 5 today at this hearing think that they're relevant. 6 You know, we got it in discovery, and that was it. 7 MR. MAUER: Well, the reason why I'm 8 doing this is if you'll remember when we were in 9 Osage Beach, Magruder's Counsel asked citizens about 10 do you remember this -- 11 HEARING OFFICER: Yes, sir. And I 12 thought it was as irrelevant as it could be then, but 13 no one challenged Mr. Brownlee on it. Bottom line, 14 we have gone far afield. I have extended to you, I 15 think more than necessarily, leeway to establish as 16 far as the operation of the plant. I think that is 17 important that we have an understanding of that, and 18 we have now on the record the amount of, I hate to 19 use the word liquor, I think that's a slander against 20 the common understanding of that term, especially 21 among those who appreciate bourbon or scotch, but we 22 know as far as the liquor, the raw sewage, the number 23 of gallons. It's been established. You've 24 established that on the record that are potentially 25 there to leak, and I don't think we need to go into</p>

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1 the area reflected in BP-26 that you were addressing.
2 Is there anything further that you have of this
3 witness?

4 MR. MAUER: Yes, your Honor.

5 HEARING OFFICER: Proceed.

6 MR. MAUER: Thank you.

7 Q. (By Mr. Mauer) Mr. Hutchcraft, you can fold
8 up BP-26, then, and I would like to ask you, then,
9 other than what you've told us before, do you have
10 specific concerns about the ability of your sewage
11 treatment plant to function in close proximity to a
12 rock quarry?

13 A. Yes.

14 Q. Okay. And just tell us what those are.

15 A. Well, one thing is the safety of my health,
16 my workers while they're out there working, you know,
17 doing anything. The dust, vibration. That's pretty
18 well it.

19 Q. Are you aware of anything that you could do
20 to protect the concrete structures that are already
21 in place in ground from any potential danger from the
22 quarry?

23 A. No.

24 Q. Is there anything that you could do to
25 protect your equipment that's exposed to the elements

1 from the dust and other things that may come from the
2 quarry?

3 A. No.

4 Q. Is there anything that you're aware of that
5 could be done to protect the sewer lines that run
6 into your plant once they're under the fence? Is
7 there anything that you could do to protect those
8 from the quarry?

9 A. Not that I'm aware of, no.

10 Q. If an accident were to occur, what would you
11 do?

12 MR. BROWNLEE: Well, I'm going to
13 object to that as speculation. We don't even know
14 what kind of -- what the word accident means in
15 relation to the question.

16 HEARING OFFICER: Restate your
17 question, Mr. Mauer.

18 Q. (By Mr. Mauer) If the sewage treatment
19 plant was damaged such that you had to shut down the
20 operation, the basins were cracked, it was leaking
21 sewage, what would you do?

22 A. Well, probably the first thing is call Osage
23 Beach and Lake Ozark and tell them to shut down.
24 They'll have to shut their lift stations down. That
25 would be the first -- very first thing. And if

1 something like that happened on the 4th of July, you
2 know, the town would have to shut down, and I just
3 don't see how that could happen. Other than that, I
4 don't know what you would do.

5 Q. Given your familiarity with lift stations
6 from Parkville and perhaps Mena, Arkansas, what
7 happens when the Cities would start to shut down the
8 lift stations?

9 A. Well, they'd have to public notice and have
10 to put out, you know, shut down the bathrooms. You
11 know, people would have to, I guess, not use the
12 bathroom. They would have to shut the lift stations
13 down so we could make the repair.

14 Q. How long would that shutdown have to last?

15 A. Depends on the damage.

16 Q. At a minimum? I mean, if it's just the
17 slightest damage such that you've got raw sewage
18 leaking out that -- in one of those concrete basins,
19 what's the bare minimum that the town would have to
20 shut down?

21 MR. BROWNLEE: Again I'm going to
22 object. This is total speculation. At a bare
23 minimum. There's no amount that's included. You
24 could have a leak that leaked a gallon a day in
25 answer to Mr. Magruder's question. It just calls for

1 pure speculation on the part of this witness as to
2 how long the City might have to close down the
3 system.

4 HEARING OFFICER: Sustained.

5 Q. (By Mr. Mauer) If there was a crack in the
6 basin such that it was leaking effluent and the basin
7 had to be shut down, all right, you can't operate the
8 plant, all I want to know is your best estimate, how
9 long would the plant have to be shut down?

10 MR. BROWNLEE: Same objection.

11 HEARING OFFICER: I don't recall the
12 testimony of this witness being that if a crack in
13 the basin, which I'm not sure what that references,
14 is leaking effluent that that requires a shutdown of
15 the entire plant to begin with. So can you be more
16 specific?

17 MR. MAUER: Certainly. I will do my
18 best.

19 Q. (By Mr. Mauer) The ditches that contain the
20 1.6 million each, all right, let's start with those.
21 If there was a crack in those two ditches such that
22 they're both leaking effluent, would you have to shut
23 down the treatment plant?

24 A. Yes.

25 Q. All right. How long would you have to shut

1 down the plant in order to drain those ditches and
2 make the repair?

3 MR. BROWNLEE: Again he's phrased a
4 question that asks for an opinion that he has to
5 drain the ditches. You could have a leak that leaked
6 a gallon a minute off of a crack in one of those
7 walls. It's just -- it calls for pure speculation.

8 HEARING OFFICER: I understand, Mr.
9 Brownlee, and I take your objection as going to what
10 weight, if any, the Hearing Officer gives to this
11 witness on the question posed. You may answer the
12 question.

13 A. Repeat it, please.

14 Q. (By Mr. Mauer) If you had a crack in the
15 concrete for the two ditches such that you had to
16 shut down the plant in order to drain the ditches,
17 how long would that take?

18 A. You're probably looking at each ditch going
19 to take you two to three days, so you're -- it's not
20 going to be an easy task.

21 Q. All right. Now, are you aware of any little
22 cracks that exist now such that we're getting just a
23 little bit of effluent leaking out?

24 A. Not that I'm aware of.

25 Q. All right. Is there any amount of little

1 leaks that you would deem permissible such that it
2 wouldn't be too bad to let a little bit of raw sewage
3 leak out?

4 A. No. A little bit would be just as bad as a
5 lot. It wouldn't make any difference.

6 Q. And whether it's a little crack or a big
7 crack, would you still have to drain the tanks to fix
8 it?

9 A. Yeah. More than likely.

10 Q. Now, if it was a break in one of the -- in
11 the clarifiers, the next step in the system, such
12 that you had to shut down the clarifier process,
13 would you still have to drain those tanks?

14 A. If it got all three of them, yeah.

15 Q. And how long would you have to shut down the
16 plant in order to make those repairs?

17 A. It's hard to say, it really is, on something
18 like that. I would say probably two or three days.

19 Q. Do you know any way in which a city can shut
20 down the sewers running through town for two or
21 three days?

22 A. No.

23 Q. If there is -- one last thing. If there is
24 a break that occurs at the treatment plant and raw
25 sewage is escaping, in your opinion is there any way

1 that some of that effluent, some of that raw sewage,
2 wouldn't end up spilled out ultimately into the Osage
3 River?

4 A. Oh, no. It would go directly into the
5 river.

6 Q. And based on your understanding of DNR
7 permits, would that be a violation?

8 A. Yes.

9 Q. All right. Thank you. One last thing. On
10 this UV system, I don't think I asked you, was that
11 system designed to be -- to protect the panels and
12 the electronics from dust?

13 MR. BROWNLEE: I'm going to again
14 object. There's been no foundation that this witness
15 knows anything more about it than the function. I'll
16 get to it, but...

17 MR. MAUER: I asked him about
18 vibrations, your Honor, and blasting, I didn't ask
19 him about dust. He was there when it was built.

20 HEARING OFFICER: I'm not sure he was
21 there when it was built. He was there when it was
22 installed. Common sense says that it wasn't built on
23 site. The panel was purchased from someone, wasn't
24 it?

25 MR. HUTCHCRAFT: Yes.

1 HEARING OFFICER: It was installed,
2 correct?

3 MR. HUTCHCRAFT: Yes.

4 HEARING OFFICER: I didn't want to
5 assume facts not in evidence, so... Overruled. I'll
6 let the witness answer.

7 Q. (By Mr. Mauer) Was the UV system when it
8 was installed, was it installed to protect it from
9 dust that might be coming off a quarry operation?

10 A. No.

11 MR. MAUER: Nothing further.

12 HEARING OFFICER: Mr. Duggan, do you
13 have any cross-examination of the witness?

14 MR. DUGGAN: Just a couple of
15 questions.

16 HEARING OFFICER: Proceed.

17 EXAMINATION

18 QUESTIONS BY MR. DUGGAN:

19 Q. You expressed a concern about dust
20 interfering with the electrical operation of this
21 facility; is that right?

22 A. Yes. We have many motors, electrical
23 panels. Yes.

24 Q. And dust interfering with the UV system,
25 correct?

1 A. Yes.

2 Q. Have you taken any actions to protect those
3 functions within the plant from dust that comes off
4 the gravel road that runs next to the plant?

5 A. We don't get -- we get very little dust from
6 that gravel road. The only vehicles that's in and
7 out of that is our own personal vehicles and our
8 hauling truck which we don't -- get very, very little
9 dust.

10 Q. Do you have any plans if the dust from the
11 road would increase, say, from increased traffic over
12 time to protect the plant from that event?

13 A. No. Not that I'm aware of, no.

14 Q. And I'm interested in your testimony. I'm
15 going to ask you to elaborate on it. You were asked
16 various questions of Counsel concerning the impacts
17 of a failure of the plant due to cracks in the basins
18 and so forth. Have you ever been through an
19 experience such as he described in his questions --

20 A. No.

21 Q. -- where you had to shut the plant down?

22 A. No.

23 Q. Have you ever been through an experience
24 anywhere in your career where you've had to shut a
25 plant down?

1 A. Well, we actually shut this plant down one
2 time when we installed the 24-inch main. That's the
3 only time we ever actually shut the plant down. We
4 actually didn't allow any effluent to come in for, I
5 think it was about an hour, when we tied in the
6 24-inch main.

7 Q. So it was only an hour shutdown?

8 A. Yes. Hour to two hours, approximately. We
9 did it at night when the flow was low and coordinated
10 with the Cities so we could actually work with them.
11 And they had people, you know, that actually shut the
12 pump stations down for a few -- I think it was an
13 hour to two hours. I don't remember exactly.

14 Q. Okay. So you can plan for an upgrade or
15 plan for routine maintenance that might involve
16 coordination of shutting down lift stations; is that
17 right?

18 A. For short periods.

19 Q. For short periods?

20 A. Short periods.

21 Q. What is the maximum period of time you would
22 expect to be able to shut down in order to accomplish
23 a task like that?

24 A. It really would depend on, you know, the
25 Public Works Department, really that shutting down

1 part. I can shut my plant down whenever I need to,
2 but it's the shutdown, you know, to fix a line or
3 whatever, the line coming into my plant, that
4 would -- we'd have to coordinate through the Public
5 Works Department on both Cities so we could, you
6 know, get everything done.

7 Q. So as I understand your answer, you really
8 can't speak for the Public Works Departments of the
9 Cities; you can only speak to shutting down your
10 plant?

11 A. My plant, yeah.

12 Q. And however long the plant would have to be
13 shut down, they would just have to be able to deal
14 with that; is that right?

15 A. Actually, we can't let -- the actual plant
16 itself, if we shut it down over eight hours, the
17 mixed liquor starts dying and turning septic and then
18 we have to start the process completely over and we
19 probably have to truck in -- bring tanker loads of
20 mixed liquor from somebody else to get our bug
21 population back up and going to where we could
22 actually make good water. And if you shut it down
23 over -- eight hours is the maximum, and if you did
24 that, your ditches would start dying and you would
25 have to have something new, new microorganisms, a new

1 bug source. You'd have to buy, purchase it or get it
2 from another treatment plant to get your plant back
3 up and going.

4 Q. Okay. Now, do you know this because you've
5 actually been through an experience like this?

6 A. I actually started up one ditch, yes, yeah,
7 from scratch. Ditch Number 1 I actually started up
8 in '04. It was actually down, and I brought it back
9 to life. I actually did, yes, I did.

10 Q. And otherwise you're speaking from training
11 you've had?

12 A. Yes.

13 Q. So based on that training and that
14 experience you've just described --

15 A. Yes.

16 Q. -- you're fairly confident about the
17 impact --

18 A. Yes. Yes.

19 Q. -- that you've just talked about?

20 A. Yes.

21 Q. Okay. Now, how would that kind of impact,
22 in your view, relate to the safety of your workers at
23 the plant, if at all?

24 A. Well, dust, you know, flying debris.
25 Because you never know. You never know what's going

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<p>1 to happen.</p> <p>2 Q. Okay. Now I'm talking about for whatever</p> <p>3 reason you have to bring the plant back to life</p> <p>4 because of the shutdown.</p> <p>5 A. Yes.</p> <p>6 Q. For a period of time. And you talked about</p> <p>7 trucking in more bugs in order to revitalize your</p> <p>8 liquor to make sure it's working properly and so</p> <p>9 forth.</p> <p>10 A. Yes.</p> <p>11 Q. That's the circumstances I'm talking about.</p> <p>12 A. Okay.</p> <p>13 Q. You're in that set of circumstances. What</p> <p>14 effect, if any, would that situation have on the</p> <p>15 safety of workers while it's going on?</p> <p>16 A. Probably none.</p> <p>17 Q. What effect, if any, if you can even say,</p> <p>18 would it have on the health of anybody while it's</p> <p>19 going on?</p> <p>20 A. I wouldn't have... I wouldn't think it</p> <p>21 would have any effect on your health at all.</p> <p>22 Q. Okay.</p> <p>23 MR. DUGGAN: I don't have any further</p> <p>24 questions.</p> <p>25 HEARING OFFICER: Mr. Brownlee --</p>	<p>1 Q. Are these more on-the-job kind of courses</p> <p>2 that supplemented the work while you were working in</p> <p>3 these various water systems?</p> <p>4 A. Yes. Yes.</p> <p>5 Q. They're like seminar-type courses; is that</p> <p>6 correct?</p> <p>7 A. Well, it's actually week-long classes, you</p> <p>8 know, training for...</p> <p>9 Q. Do you have any training in terms of</p> <p>10 blasting?</p> <p>11 A. No.</p> <p>12 Q. Do you have any training on concrete</p> <p>13 construction as it relates to any kind of sewer or</p> <p>14 water lines?</p> <p>15 A. I did concrete construction for two years.</p> <p>16 Q. Have you had any formal training beyond just</p> <p>17 knowing how to build a ditch and put stuff in?</p> <p>18 A. No.</p> <p>19 Q. Do you have any training in pipeline</p> <p>20 construction, formal educational training, not just</p> <p>21 OJT?</p> <p>22 A. Yeah. No. Nothing other than on the job.</p> <p>23 Q. Do you have any training on the engineering</p> <p>24 and design of UV systems?</p> <p>25 A. No.</p>
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<p>1 MR. BROWNLEE: I can go ahead. It's</p> <p>2 not too much.</p> <p>3 HEARING OFFICER: Then let's proceed.</p> <p>4 EXAMINATION</p> <p>5 QUESTIONS BY MR. BROWNLEE:</p> <p>6 Q. Mr. Hutchcraft, my name is Richard Brownlee,</p> <p>7 and I represent the Magraders in this matter. I'm</p> <p>8 going to go through this in not any order because I'm</p> <p>9 going to try to follow what Mr. Mauer did, so if it's</p> <p>10 out of order... The contract that Alliance has with</p> <p>11 the plant, is it just with the Joint Sewer Board?</p> <p>12 A. Yes.</p> <p>13 Q. There's no contract that your company has</p> <p>14 with either Lake Ozark or Osage Beach?</p> <p>15 A. No.</p> <p>16 Q. Now, I didn't think that you got into your</p> <p>17 basic education. What is your educational background</p> <p>18 starting with graduation from high school?</p> <p>19 A. High school, and then I took some short</p> <p>20 schools throughout the years.</p> <p>21 Q. What do you mean short schools?</p> <p>22 A. Rich Mountain Community College, computer</p> <p>23 classes and management classes. I went to</p> <p>24 California, the University of California Water and</p> <p>25 Wastewater. I did the whole...</p>	<p>1 Q. Did you have any training or did you have</p> <p>2 any input on the design or installation of the UV</p> <p>3 system put in at this plant you've testified to?</p> <p>4 A. Any training?</p> <p>5 Q. Yep.</p> <p>6 A. No training.</p> <p>7 Q. Or did you have anything to do with the</p> <p>8 design of that system?</p> <p>9 A. Somewhat. If, you know, any changes need to</p> <p>10 be made, yes.</p> <p>11 Q. I'm talking about the design and</p> <p>12 installation of the original system. Do you have</p> <p>13 anything to do with that?</p> <p>14 A. Input. Just input.</p> <p>15 Q. Just verbal input?</p> <p>16 A. Verbal.</p> <p>17 Q. Where did you buy this system?</p> <p>18 A. Actually, the Board actually bought the</p> <p>19 system.</p> <p>20 Q. But it was some outside vendor?</p> <p>21 A. Yes.</p> <p>22 Q. And did they install it?</p> <p>23 A. Well, yeah. Another contractor did.</p> <p>24 Q. Do you know, when they installed it, were</p> <p>25 they aware -- what year was that?</p>

22 (Pages 82 to 85)

1 A. Just this last year.
 2 Q. The UV system?
 3 A. Yes.
 4 Q. Were they aware that there was an existing
 5 quarry location approximately 100 feet from your
 6 building?
 7 A. No.
 8 Q. They didn't know -- did anyone explain that
 9 to them?
 10 A. No.
 11 Q. You're sure of that?
 12 A. Yes.
 13 Q. Okay. Do you know why they didn't?
 14 A. I have no idea.
 15 Q. If you had concerns about a quarry and
 16 you -- did you know there was a quarry permitted
 17 there?
 18 A. Nope. Not --
 19 Q. You didn't --
 20 A. I seen the very first drilling rig pull in,
 21 and that's when I let the City know that I seen a
 22 drilling rig, and that's when the City...
 23 Q. I'm talking about the APAC permitted site --
 24 are you aware there's a permitted quarry right at
 25 that rock face?

1 A. I personally, no.
 2 Q. Have you learned since?
 3 A. Yeah. Yes.
 4 Q. But when this UV system was installed, you
 5 said you didn't even know as manager of the system
 6 there was a permitted quarry there?
 7 A. I was aware of the agreement that they had
 8 with APAC, and that was it.
 9 Q. Well, if you were aware of that, you must
 10 have been aware there was a quarry that had been
 11 permitted right next to the sewer system, correct?
 12 A. Well, I guess, yes, it will be I was aware.
 13 I didn't know it had a permit. I was aware of the
 14 agreement. I seen the agreement from back in way
 15 back before -- before I was here. I seen a copy of
 16 that agreement, and it didn't have nothing about no
 17 permit number, no nothing.
 18 Q. Well, it was a mining -- a quarry agreement.
 19 Was it a lease agreement?
 20 A. Yes. That's all it was.
 21 Q. Did you notice if you saw any restrictions
 22 on any kind of blasting or anything else from that
 23 lease agreement?
 24 A. Nope. No, sir.
 25 Q. So even having knowledge, you didn't tell

1 the UV people about this?
 2 A. Nope.
 3 Q. Today do you know whether that quarry is
 4 permitted right now?
 5 A. My -- as far as I know, I know nothing about
 6 the permit process or what they did.
 7 Q. And I think you testified that your
 8 obligation as the manager of the plant through your
 9 company, your jurisdiction or your obligation begins
 10 at your fence line, correct?
 11 A. Yes.
 12 Q. And that's when the pipes come in, the three
 13 now that we know about?
 14 A. Yes.
 15 Q. So you have absolutely no jurisdiction or
 16 control of any of the pipes outside of the plant,
 17 correct?
 18 A. No.
 19 Q. Is that correct?
 20 A. Yes. Sorry.
 21 Q. You don't have anything to do with the
 22 maintenance of those lines, the design, any of that?
 23 A. No.
 24 Q. Correct?
 25 A. No.

1 Q. What is the plant elevation -- and I use --
 2 I realize it's different elevations, but the
 3 approximate area, what's the elevation from the plant
 4 as opposed to the Osage River? Do you know how much
 5 higher you sit?
 6 A. No, I don't.
 7 Q. Well, 50 feet, 800, 30?
 8 A. Oh, I would say probably a little over
 9 50 feet.
 10 Q. So from your discharge point -- it goes into
 11 that creek, I guess, doesn't it?
 12 A. Yeah.
 13 Q. It's a losing stream?
 14 A. Yeah.
 15 Q. You think it's downhill 50 feet, it hits the
 16 Osage River?
 17 A. I would say yeah, at least.
 18 Q. Now, the 24-inch pipe and the 18-inch pipe
 19 coming in from, as you call, I think, the Osage
 20 Beach, during the day when those are having input
 21 into the plant, do you know the capacity of each of
 22 those separate pipes? That is, do you know how much
 23 volume comes in on an average day in, let's say the
 24 24-inch pipe?
 25 A. Separate? No. No. I don't -- we don't

1 separate them. They both -- the 18 and the 24 comes
2 into a common flume, and we have no way of
3 determining how much comes from the 18 or the 24.

4 Q. Do you know anything about the volumes, the
5 potential volumes of those pipes?

6 A. No, not really.

7 Q. And so you don't have a -- you couldn't tell
8 us regarding the percentage of capacity on an average
9 day in the 24-inch pipe that's used, and the same
10 question for the 18-inch pipe?

11 A. No.

12 Q. You don't know if --

13 A. I know how much, per se, Osage Beach
14 contributes, yes, but not --

15 Q. Okay. What would that be?

16 A. -- on a split.

17 Q. What's that -- what would that be?

18 A. Normally between 85 and 90 percent.

19 Q. So I assume the remaining percentage is in
20 the 12-inch Lake Ozark pipe?

21 A. Yes. Yes.

22 Q. And you got us started to where that pipe
23 comes in, and we sort of got to Wood River Road and
24 then stopped. Really if you could illustrate, where
25 does this 12-inch pipe go from the plant? Can you --

1 A. It actually comes out of the side of the
2 plant.

3 Q. On the west side, correct?

4 A. Yes. It comes out here and it actually
5 goes -- there's a creek, a valley, that goes down
6 through here, and it actually does not go back to
7 Wood River. It actually stays in that valley.

8 Q. Where does it go? I mean, it must go
9 somewhere.

10 A. It goes down by the creek, River View
11 Campground, it goes through there and crosses the
12 road.

13 Q. Crosses Highway 54?

14 A. Crosses Highway 54.

15 Q. So we've got, then, a sewer pipeline
16 underneath Highway 54, correct?

17 A. Yes.

18 Q. And then where does it go? Do you know?

19 A. I don't know. It goes to the main lift
20 stations, as far as I know.

21 Q. So that would -- then it comes up Highway 54
22 up the hill, I assume?

23 A. It actually goes -- it actually crosses the
24 highway there somewhere by the bridge, and then it
25 goes across there by River View Campground, down that

1 valley and then to the plant.

2 Q. Okay. But do you know where it comes down
3 towards the Osage River? Where does it come from?
4 Just up on the hills somewhere?

5 A. It comes through that same valley, River
6 View Campgrounds.

7 Q. Well, River View Campgrounds sits right next
8 to the Osage River. Almost everything above it is
9 upgrade, so where the pipeline comes from somewhere
10 to get next to River View Campground, do you know
11 where it comes from?

12 A. No.

13 Q. And do you know anything about the volume of
14 that pipe, that is, whether on a daily basis it's --
15 the volume is half full or three-quarters or a
16 quarter full?

17 A. They're supplemented. They don't send us
18 full continuous, Lake Ozark don't.

19 Q. So that pipeline, could it be available if
20 you would have a break in, let's say in the 18-inch
21 pipe, do you know whether you could divert?

22 A. 12-inch pipe, no. No. Lake Ozark's
23 already --

24 Q. Do you know that for a fact?

25 A. No, I don't.

1 Q. Now, your concerns over workers, concrete
2 break, electric system and motors and UV, those are
3 your personal concerns, aren't they, sir?

4 A. Yes, but no. It's concerns for the City.

5 Q. I understand, but --

6 A. That's why I'm a contractor. That's why --

7 Q. You don't represent the City; you represent
8 the Joint Sewer Board. These concerns that you've
9 talked about, they're your personal concerns, are
10 they not?

11 A. Somewhat.

12 Q. Are they based on any scientific evidence
13 that you've prepared or seen?

14 A. Well, anybody knows that dust is not good
15 for electrical motors or anything electrical.

16 Q. That's common sense, and I absolutely agree
17 with you. I asked you, is it based on any scientific
18 evidence, any of those concerns?

19 A. Well, you can take a handful of dust and a
20 lighter and light it and it will --

21 Q. I asked you a simple yes or no question.

22 A. That's the only facts that I've seen.

23 Q. That's common sense kind of concerns?

24 A. I've seen dust explode.

25 Q. They're common sense kind of concerns,

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<p>1 right?</p> <p>2 A. Yes.</p> <p>3 Q. And, again when the UV plant was installed,</p> <p>4 do you know whether it was designed regarding</p> <p>5 tolerances for blasting? Do you know anything that</p> <p>6 it had to do with blasting?</p> <p>7 A. Not that I'm aware of.</p> <p>8 Q. The same thing for dust. Do you know</p> <p>9 whether it had any design features in that plant that</p> <p>10 had anything to do with dust concerns?</p> <p>11 A. No.</p> <p>12 Q. And you mentioned, I think, earlier that</p> <p>13 you've had experience where backhoes got into lines</p> <p>14 and caused a break, correct?</p> <p>15 A. (Nods.)</p> <p>16 Q. You've got to answer yes or no for the</p> <p>17 reporter.</p> <p>18 A. Yes.</p> <p>19 Q. Okay. And have you ever had a situation</p> <p>20 where an Act of God caused a break in the pipeline,</p> <p>21 freeze or thaw?</p> <p>22 A. Not that I'm aware of.</p> <p>23 Q. You've never in your work seen a water or</p> <p>24 sewer line break where there's been a thaw or a</p> <p>25 freeze problem?</p>	<p>1 A. I have no idea. I have no idea.</p> <p>2 Q. Do you know anything about the construction</p> <p>3 of those lines?</p> <p>4 A. No, sir.</p> <p>5 Q. Anything about the design of the pipe?</p> <p>6 A. No, sir.</p> <p>7 Q. Do you know what kind of pipe's in there?</p> <p>8 A. Yes, sir.</p> <p>9 Q. What is it?</p> <p>10 A. Duct tile and PVC.</p> <p>11 Q. Do you know the flanging arrangements on the</p> <p>12 duct tile pipe, how it's joined?</p> <p>13 A. Yes.</p> <p>14 Q. What is it?</p> <p>15 A. As far as I know, it's bolted.</p> <p>16 Q. What about the PVC, how is it joined?</p> <p>17 A. I'm not real sure.</p> <p>18 Q. Do you know anything about the backfill of</p> <p>19 those pipes?</p> <p>20 A. No, sir.</p> <p>21 Q. Do you know anything about traffic crossing</p> <p>22 those pipes?</p> <p>23 A. No, sir.</p> <p>24 Q. Do you know anything about whether the</p> <p>25 traffic can cross pipelines?</p>
Page 95	Page 97
<p>1 A. Not that I've ever worked on myself</p> <p>2 personally.</p> <p>3 Q. Do you know about them?</p> <p>4 A. I've seen it, yes. Just a normal leak like</p> <p>5 on a water main or --</p> <p>6 Q. And a freeze or a thaw can heave and break a</p> <p>7 water or sewer line, can't they, sir?</p> <p>8 A. Yes. But they --</p> <p>9 Q. Have you ever worked in a northern</p> <p>10 environment where that happened?</p> <p>11 MR. MAUER: Excuse me. I think the</p> <p>12 witness was not done with his answer. I think Mr.</p> <p>13 Brownlee should at least let him finish his answer.</p> <p>14 HEARING OFFICER: Please let the</p> <p>15 witness finish, Mr. Brownlee.</p> <p>16 A. That's why they bury sewer lines deep enough</p> <p>17 where they're not going to freeze and thaw.</p> <p>18 Q. (By Mr. Brownlee) So if they bury them deep</p> <p>19 enough, you're not worried about freeze or thaw,</p> <p>20 right?</p> <p>21 A. No.</p> <p>22 Q. That's right?</p> <p>23 A. Yes.</p> <p>24 Q. And do you know how deep these lines are</p> <p>25 buried that you have concerns about?</p>	<p>1 A. I don't know.</p> <p>2 Q. Do you know anything about it, is the</p> <p>3 question.</p> <p>4 A. It goes under every roadway.</p> <p>5 Q. That's exactly right. Those two pipes</p> <p>6 coming in, do you know how many highways and roads</p> <p>7 they cross under before they get onto the, quote,</p> <p>8 Magruder property?</p> <p>9 A. I have no idea.</p> <p>10 Q. Lots of them? Comes clear from Lake Ozark?</p> <p>11 MR. MAUER: Objection, your Honor.</p> <p>12 He already said he has no idea.</p> <p>13 A. I have no idea.</p> <p>14 HEARING OFFICER: Sustained.</p> <p>15 Q. (By Mr. Brownlee) And let's talk about your</p> <p>16 concern. Tell me about the written emergency</p> <p>17 remediation plan that this plant has for things like</p> <p>18 the earthquake we had here a couple of weeks ago. Do</p> <p>19 you have a written remediation plan?</p> <p>20 A. We have an emergency response plan, yes.</p> <p>21 Q. Tell me about it as it relates to a basin</p> <p>22 breaking if you had an earthquake.</p> <p>23 A. We would call the necessary authorities and</p> <p>24 tell them what happened and do the work.</p> <p>25 Q. Okay. You call somebody and tell them,</p>

25 (Pages 94 to 97)

1 we've had a break in the sewer line. Now, you tell
2 me what work you do.

3 MR. MAUER: Wait a minute. I'm going
4 to object. That misstates the question, because he
5 just made it sewer line versus basin. I think this
6 witness made it real clear he doesn't have anything
7 to do with the sewer lines.

8 HEARING OFFICER: The objection is
9 sustained. You need to confine your questions with
10 this witness on the plant.

11 MR. BROWNLEE: I'm sorry. If I said
12 line, I didn't mean it.

13 Q. (By Mr. Brownlee) Does the plant have a
14 written plan right now to deal with major
15 catastrophes such as an earthquake?

16 A. Emergency response plan.

17 Q. Can you tell me what that is?

18 A. Yes. We've got phone numbers, and you start
19 calling people letting people know and, you know,
20 your contractor and get somebody in here to get it
21 fixed.

22 HEARING OFFICER: Excuse me just a
23 moment, Mr. Brownlee.

24 MR. MAUER: That's Mr. Gognan.

25 HEARING OFFICER: Mr. Gognan, I'm

1 response -- the action you take? Not just calling
2 people.

3 A. You actually -- you have to call people to
4 let them know that something has happened. You've
5 got to call DNR, tell them you have a spill.

6 Q. I'm aware of that.

7 A. Then you have to get ahold of your
8 contractors and actually get in and get the work
9 done, get your hands dirty.

10 Q. Okay. What do they do? That's the point
11 I'm at now. What do your contractors have to do?

12 A. Whatever needs to be done. If it's a crack,
13 we get in and drain the basin, we get in and fix the
14 crack, refill the basin. Whatever needs to be done
15 is what we're there to do.

16 Q. How many pages is this remediation plan?

17 A. It's probably eight, ten.

18 Q. And does it talk specifically about what's
19 done, or does it just leave it to the contractor?

20 A. Not any details, no.

21 MR. BROWNLEE: I think that's all.

22 HEARING OFFICER: Mr. Brownlee, how
23 much longer are you going to be with this witness?

24 MR. BROWNLEE: I'm just checking
25 here, Judge. Okay, I have nothing else. That's all.

1 Bart Tichenor. I'm the Hearing Officer for the Land
2 Reclamation Commission. You need to step out while
3 this witness is testifying. Just have a seat out in
4 the area there, and when you are ready to be called,
5 someone will come get you. Thank you, sir.

6 MR. MAUER: Mr. Tichenor, we never
7 actually got a chance to discuss this on the record.
8 I just want to -- for the record, my understanding of
9 invoking the rule against witnesses is that it must
10 be done at the beginning of the proceeding, and
11 certainly that rule has not been enforced against
12 other parties and their witnesses. I just want to
13 preserve that for the record.

14 HEARING OFFICER: That's fine.
15 Proceed, Mr. Brownlee.

16 Q. (By Mr. Brownlee) Is this plan written or
17 just a list of phone numbers?

18 A. It's written.

19 Q. Okay. You've got to call people, call the
20 contractors. What is the remediation plan? What do
21 you do if you have a major crack and leak that's
22 sewage is going out of one of your holding basins?
23 What do you do?

24 A. Follow the response plan. Call DNR.

25 Q. I'm asking you what that is. What is the

1 HEARING OFFICER: At this point both
2 the Hearing Officer and the court reporter need a
3 break.

4 MR. MAUER: Mr. Tichenor, I'm sorry,
5 but this witness' daughter is going into surgery at
6 1:00.

7 HEARING OFFICER: I understand.

8 MR. MAUER: And, if possible, could
9 we go ahead and release him?

10 HEARING OFFICER: If you don't have
11 any further questions, we certainly can.

12 MR. BROWNLEE: That's fine.

13 MR. MAUER: I don't have anything
14 further for this witness. I appreciate your time,
15 Mr. Hutchcraft.

16 HEARING OFFICER: One moment. One
17 question. Are you aware of what the elevation of
18 your plant is?

19 MR. HUTCHCRAFT: No, I'm not, not
20 right off the top of my head.

21 HEARING OFFICER: All right. Thank
22 you. With that, the witness is dismissed and we will
23 adjourn until five after. We're off the record.

24 (Brief recess.)

25 HEARING OFFICER: We're back on the

1 record. Mr. Mauer, call your next witness.

2 MR. MAUER: Greg Gognan.

3 HEARING OFFICER: Mr. Gognan, come
4 forward and be sworn.

5 GREG GOGNAN,
6 of lawful age, produced, sworn, and examined on
7 behalf of the Joint Sewer Board, deposes and says:

8 MR. MAUER: Just one housekeeping
9 matter, Mr. Tichenor. I would move admission of
10 BP-16 and BP-26 from Mr. Hutchcraft.

11 HEARING OFFICER: Counsel moves for
12 admission of BP-16. Any objection?

13 MR. BROWNLEE: None.

14 HEARING OFFICER: No objection. It
15 is received. Counsel moves for the admission of
16 BP-26. Any objection? No objection. It is
17 received.

18 MR. MAUER: Thank you.

19 HEARING OFFICER: Proceed.

20 EXAMINATION

21 QUESTIONS BY MR. MAUER:

22 Q. Good morning, Mr. Gognan.

23 A. Good morning.

24 Q. Would you spell your last name for the court
25 reporter, please.

1 A. G-O-G-N-A-N.

2 Q. Where do you live, Mr. Gognan?

3 A. Osage Beach.

4 Q. How long have you lived there?

5 A. I've lived there 32 years.

6 Q. What's your employment?

7 A. I'm employed by Central Bank at Lake of the
8 Ozarks.

9 Q. What's your position?

10 A. I'm the president.

11 Q. How long have you been the president of
12 Ozark Bank?

13 A. Four years.

14 Q. Can you tell us just a little bit about
15 Central Bank in comparison to its competitors and the
16 type of business that it does in the Lake of the
17 Ozarks region?

18 A. Central Bank at Lake of the Ozarks would be
19 the largest bank in the region. Our total assets are
20 just a little under 500 million, and we cover the
21 Camden, Miller and Morgan County with the facilities.
22 We have eight facilities in that region.

23 Q. What types of business is the prototypical
24 customer for Central Bank? What types of businesses
25 do you look for? Is it residential home loans,

1 business loans? What types of business does Central
2 Bank do?

3 A. We would do a lot of commercial,
4 residential, development, tourism business, hotels,
5 restaurants, the start-up businesses and just all
6 ranges of business development and also retail
7 business in the lake area.

8 Q. In your position as president of Central
9 Bank, are you familiar with the economic environment
10 of the Lake of the Ozarks region?

11 A. Yes, I am.

12 Q. And do you also have -- have you been
13 involved in any community or civic activities down at
14 Lake of the Ozarks?

15 A. Yes. I currently sit on the hospital board,
16 Lake Regional Hospital Board. I'm involved in the
17 local Rotary Club. And so, yes, we're -- I'm
18 involved in different organizations and activities in
19 the lake area.

20 Q. Have you been involved with activities such
21 as the Chamber of Commerce, things like that?

22 A. I have served as president of the Chamber of
23 Commerce, Lake Area Chamber of Commerce, in 1982 and
24 was also -- that was the year we consolidated the
25 Osage Beach Chamber with the Bagnell Dam Lake Area --

1 or Lake Chamber to -- formed it into one Chamber of
2 Commerce.

3 Q. Did you also serve on any civic committees
4 for -- or city committees for Osage Beach or other
5 communities?

6 A. I served as chairman of the Wastewater
7 Treatment Committee that was formed to look at the
8 wastewater treatment issues around the entire lake
9 area, and that was in the early to mid-'90s.

10 Q. Why was it important to look at the
11 wastewater issues in and around the lake area?

12 A. I believe there was a ruling that came out,
13 I believe from the DNR, that limited the use of
14 septic tanks and aerator systems, and so a task force
15 was put together made up of representatives from each
16 County Commission, Miller, Morgan, Camden and Benton
17 County, along with some consultants in that area.
18 And we also had a representative from the DNR and
19 also the Department of Health that served on that
20 committee.

21 Q. What was your understanding of why
22 wastewater treatment is so important in the lake
23 area? What is it about the lake area that makes that
24 so sensitive?

25 A. The number one issue at the lake or reason

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<p>1 for the lake being there and being successful 2 economically and in the development area is the lake 3 itself, and the key to that remaining there is that 4 the lake remains clean from any pollution of any 5 form. And so we think as a community it's important 6 that we do what we can in order to protect that. 7 It's a -- we consider it a vital economic source. 8 We also think it's -- whether you're 9 directly involved with the lake, whether it be in a 10 hotel business or anything that's directly on the 11 lake, boat sales, any business that exists down there 12 survives, whether it's direct or indirectly, because 13 the lake is there. It's a very vital economic part 14 of the lake's development or the lake area's 15 development. 16 Q. Did you have a particular role on this 17 wastewater treatment committee? 18 A. I was the chairman of that task force. 19 Q. And given your position on that, did you 20 become familiar with the wastewater treatment issues 21 in and around the lake area? 22 A. Yes. We covered those issues and we 23 actually issued a final report that came out in 1999. 24 And we had some consultants there in the wastewater 25 treatment industry that also served on that</p>	<p>1 reasons that we've had so much growth and development 2 in Lake Ozark and Osage Beach compared to the rest of 3 the lake area. 4 Q. I want to talk about that growth and 5 development. Has the growth and development in Osage 6 Beach been good for Central Bank? 7 A. It has been good for not only the bank but 8 the community and also the State and everyone that's 9 been touched by it or involved in it. 10 Q. So I want to make clear, are you anti-growth 11 or in any way trying to stop the Osage Beach or Lake 12 Ozark communities from continuing to grow and expand 13 and prosper? 14 A. We are very pro-development and pro-growth. 15 That's how the bank makes money. We make good 16 bankable loans, and as the community grows, we grow, 17 too. We think it's important that the infrastructure 18 is in place to handle that growth. 19 Q. Now, you understand that for a community to 20 grow, you've got to have rock in order to build the 21 roads and build the houses and things like that? 22 A. Very much so. A quarry is important to any 23 development. We've -- there's been a lot of rock 24 delivered and laid and put down there at the lake 25 area, and it's an important part of the development</p>
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<p>1 committee. 2 Q. As part of that program, did you have an 3 opportunity to become familiar with the Osage 4 Beach/Lake Ozark sewage treatment facility? 5 A. Yes, we did. 6 Q. And what did you find out about that? 7 A. Well, I think one of the keys to developing 8 any area is that you have to grow your 9 infrastructure, whether it be highways or wastewater 10 treatment. Wastewater treatment is one of them. And 11 in order for your communities to continue to grow, 12 you have to be able to provide that service. 13 One of the key parts of it is to have a 14 central wastewater treatment system or sewage system, 15 and then it's also important, it's not feasible to 16 have it all over the lake, so it's important that 17 you're able to hook other facilities as you can and 18 eventually keep expanding the central sewer system. 19 But Osage Beach and Lake Ozark having a 20 central sewer system -- and that came at the urging 21 of DNR in 1982. They were very supportive. They 22 even suggested and recommended where the treatment 23 plant is located today. And we have grown that 24 system from nothing in 1982, non-existent, to what it 25 is today, and we believe that that's one of the key</p>	<p>1 process. 2 Q. Are you in any way anti-quarry or opposed to 3 quarrying operations in general? 4 A. No. We think it's a needed part of the 5 development of the area, so no. 6 Q. Okay. Let's talk about this particular 7 quarry. Are you familiar with this proposed quarry 8 site? 9 A. Yes, I am. 10 Q. And what's your understanding of the 11 potential impact of this proposed quarry site on the 12 sewage treatment plant and the lines that run through 13 the middle of it? 14 A. That the blasting over time could cause wear 15 and deterioration to the sewage pipes running through 16 the property and also the treatment plant which will 17 be located right next to the quarry. And that's a -- 18 that's our main concern. 19 Q. All right. Now, you're in the -- are you a 20 blasting expert? 21 A. No. 22 Q. You're not here today to offer testimony 23 about how that damage might occur or anything like 24 that; is that true? 25 A. That is correct.</p>

28 (Pages 106 to 109)

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1 Q. Then let's talk about things that you are
2 here for. In your 32 years at Lake of the Ozarks,
3 could you describe for Mr. Tichenor what you've seen
4 about the growth and expansion and prospering of the
5 Lake of the Ozarks area, particularly Osage Beach and
6 Lake Ozark?

7 A. We've gone from a tourism community,
8 strictly tourism community, since I've been there in
9 1976 where we had activity during the season and then
10 in the off season there would be very little activity
11 or very little business. Most of the roads off
12 Highway 54 were gravel. We had no hospital. We had
13 no fast food restaurants. We had no shopping center.

14 Since then, we've seen tremendous
15 development in the lake area with the highways and
16 the infrastructure. We've seen not only residential
17 development but also condominiums, and we've become
18 more of a year-round community. We went from just
19 being tourism related to being a strong second home
20 community and retirement home community, which is a
21 more year-round environment for the lake area.

22 And then probably in the last five or
23 six years we've become, in addition to that, we've
24 become a regional retail shopping destination which
25 has added to the second home and the year-round

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1 residents. Now we have people traveling from a 40 or
2 50-mile radius to do their general shopping, in
3 addition to the tourism business that we continue to
4 build and attract. So it has had probably one of the
5 fastest growing areas in the state.

6 The local hospital went from a lake
7 general hospital to a regional hospital, and today we
8 just completed a \$50 million expansion, \$10 million
9 on an imaging center and \$40 million on private rooms
10 and three new surgery suites, a new emergency room
11 facility. And so we've just seen just tremendous
12 growth beyond anyone's expectations.

13 Q. Can you relate the growth experienced by
14 Lake Ozark and Osage Beach to the infrastructure?
15 And in particular I'm referring to the existence of
16 the sewer system and the sewage treatment plant.

17 A. I think as we grow and we have a more dense
18 population, I think it's critical that you are able
19 to handle your wastewater treatment. We are in a
20 unique area where we're made up -- our terrain is
21 made up of hills and valleys and hollows. This
22 system requires a lot of lift stations. It's under a
23 pressure line instead of a gravity line. But that
24 has -- to me, it's allowed us to develop every acre
25 and every bit of lake frontage.

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1 And I think if you've been down there at
2 all -- and I think a lot of people here have -- it's
3 my belief that the lake area will develop on every
4 part of lake frontage from the Bagnell Dam to Truman
5 Dam. And I think Lake Ozark and Osage Beach are an
6 example of that and I think it's critical that as the
7 lake grows the infrastructure has to grow with it.

8 Q. Let's talk about -- one more thing on
9 infrastructure. Are you familiar with an expansion
10 project or relocation project for Highway 54?

11 A. Yes. Yes, I am. It is the expressway which
12 basically runs from the Osage River all the way to
13 Camdenton and then north, then south on Highway 5.
14 The project has been approved. The total cost of all
15 the phases is approximately \$200 million, and MODOT
16 is telling everyone that they anticipate that we will
17 be driving on those roads by the end of 2010. And,
18 again, that's another example of I think in order to
19 have the growth and get people around, you have to
20 have the infrastructure, and we think that that will
21 ensure our growth for the next 20 years.

22 Q. To your knowledge, has the City of Osage
23 Beach and particularly the Mayor been supportive or
24 opposing the Highway 54 project?

25 A. We have found the Mayor to be

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1 pro-development, pro-business development,
2 pro-highways. I think the Mayor acts on whatever she
3 feels will be in the best interest of the City. Our
4 experience is there's no hidden agendas there. That
5 doesn't mean that we agree on every issue. I think
6 that people can disagree on issues. But we've found
7 her to be -- her number one focus is what's in the
8 best interest of the City. And then we found her to
9 be pro-development.

10 Q. Okay. The Highway 54 expansion project,
11 there is some suggestion that if approved some of the
12 rock that may come out of this quarry might be
13 utilized into part of that project. All right? So
14 this is why I'm asking my question, based on that
15 suggestion. Even if some of this rock could be
16 utilized in that expansion project of Highway 54,
17 would you say that it's worth the risk of allowing
18 this quarry to operate because some rock might be
19 utilized in that project?

20 MR. BROWNLEE: I'm going to object to
21 lack of foundation and speculation on the part of
22 this witness. Whether he's able to assess risk is
23 just totally beyond his expertise.

24 HEARING OFFICER: I'll allow you to
25 respond, Mr. Mauer.

29 (Pages 110 to 113)

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<p>1 MR. MAUER: I'll just rephrase my 2 question. 3 HEARING OFFICER: All right. Please. 4 Thank you. 5 Q. (By Mr. Mauer) Mr. Gognan, I'm trying to 6 get to the suggestion that the Land Rec Program 7 should approve this permit because it might help the 8 expansion of Highway 54. All right? That's what I'm 9 trying to address. Are you aware of other rock 10 quarries in the area that might provide rock to the 11 Highway 54 expansion? 12 A. I know there's other quarries in the area. 13 Q. Has there ever been, to your knowledge, a 14 lack of rock or an unavailability to do a project 15 because there isn't rock available in order to expand 16 a road or start a development? 17 A. To my knowledge, no. 18 Q. Are you aware of anything in the Lake Ozark 19 economy that would necessitate opening another rock 20 quarry before a road could be built or expanded? 21 MR. BROWNEE: Again I'm going to 22 object. That just calls for pure speculation. 23 There's no foundation, and this witness isn't 24 qualified to know what the volume of rock is or those 25 kind of needs to offer an opinion like that.</p>	<p>1 condominiums. We have a marketing budget that is 2 funded by a lodging tax now, so I think that we've 3 had a lot of growth and development in that area. 4 And it's become a -- more of a -- probably gone from 5 maybe a state destination to more of a regional 6 midwest and in some cases a national destination. 7 Q. You mentioned marketing. Does the Lake of 8 the Ozarks actually market to tourists beyond the 9 state of Missouri? 10 A. Yes, through the Lake Ozark Conventions and 11 Visitors Bureau and also the Tri-County Lodging 12 Association. I believe there's a \$0.03 room tax at 13 this time, and those funds are used to market 14 regionally. And by the region, I'm talking about the 15 Midwest and within a 500-mile radius, I think, is 16 where probably the most marketing is done outside the 17 lake area. 18 Q. Are you familiar with events that have 19 happened in the past that have caused -- that have 20 tarnished the image of the Lake of the Ozarks or may 21 have caused problems with the tourism trade at Lake 22 of the Ozarks? 23 A. I think going back to '82 when the issue 24 came up that we needed to be looking at and starting 25 a central sewer system in the City of Osage Beach and</p>
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<p>1 MR. MAUER: I didn't ask for an 2 opinion. I asked if he knew, if he's aware of 3 anything. 4 HEARING OFFICER: The question itself 5 assumes that this witness has knowledge of the 6 production and capacity of certain quarries in the 7 area. No foundation has been laid. The objection is 8 sustained. 9 Q. (By Mr. Mauer) Let me try it this way: 10 Have you read any information, received any reports, 11 heard anything on the news that the Highway 54 12 project expansion is going to be delayed or is 13 stalled in any way because of unavailability of rock? 14 A. No, I have not. 15 Q. Okay. To your knowledge, is that project 16 still charging ahead? 17 A. Yes. And according to MODOT, they're 18 proceeding ahead. 19 Q. All right. Let's talk about the tourism 20 that's been experienced at the lake. Starting back 21 in 1972, can you explain to the Hearing Officer the 22 change or growth or expansion that's been experienced 23 by Lake of the Ozarks in tourism? 24 A. We've gone from kind of a mom and pop 25 operation to just larger operations, larger hotels,</p>	<p>1 we were being urged to do so by the DNR, there was a 2 concern at that time about any run-off that we may be 3 having or any problems we may be having with 4 wastewater treatment running into the lake. 5 We had articles at that time expressed at 6 that time in the St. Louis and Kansas City papers 7 that were questioning that, and that has a real 8 direct impact on the Lake of the Ozarks area. And I 9 think rightfully so at their urging we went to work 10 on getting the system in. The City even passed a 11 half cent sales tax in order to fund the expense to 12 install this system and get it going. 13 I think it's been a tremendous success 14 story for the DNR, for the City of Osage Beach, for 15 the State of Missouri on how -- the growth we've had 16 in the system. With any system, from time to time I 17 think there's going to be some hiccups, and my memory 18 serves me that we had such a spill, a pretty sizable 19 spill, and the headlines in the St. Louis and Kansas 20 City papers were that raw sewage spills into Lake of 21 the Ozarks. And that is devastating. 22 To me, in this whole process the biggest 23 concern that we have would be anything that would 24 create that kind of a situation. And you'd have 25 direct expenses in whatever it cost to repair</p>

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<p>1 something like that, but the higher expense and the 2 higher cost to the lake area is the public relations 3 and the articles in the paper, which is just almost 4 impossible for us to ever recover from.</p> <p>5 Q. Let me back up and break that down just a 6 little bit. You said that back in 1982 there were 7 actually reports and public information about the 8 potential of sewage being leaked into the lake?</p> <p>9 A. I think there was -- I think there were 10 questions being raised about that issue, and I think 11 there might have been one or two large properties 12 that were having some difficulty, and that... You 13 know, and I think rightfully so we needed to get to 14 work on that and do something to address that.</p> <p>15 Q. Did the publicity about the potential of raw 16 sewage being leaked into the lake in the early '80s, 17 did that have an adverse impact on the economy of the 18 Lake of the Ozarks?</p> <p>19 A. I believe -- yes. Anytime you get press 20 like that, it has a negative effect. Some people, 21 you know, they read that and they never bother to 22 follow up and see what the reality of it is, and in 23 their minds, you know, they're thinking Lake of the 24 Ozarks has -- is filled with raw sewage. So yes, 25 that has -- that has a negative impact.</p>	<p>1 to be able to handle that wastewater, and the -- I 2 think that we have a lot of eyes on us now at Lake of 3 the Ozarks. We have a lot more eyes today than we 4 had back in the early '80s, first being one of them 5 that has gotten involved now in the regulation of the 6 Lake of the Ozarks. And so my belief is not only 7 would it be a regional story but it would be a 8 national story, and I believe it would take years to 9 recover from that, if ever.</p> <p>10 Q. Beyond the initial impact of a shutdown of 11 the plant or a leak, you know, the initial cost to 12 clean up and the loss of business, do you believe 13 there would be a residual impact on the impression 14 and the public caused by the publicity and the image 15 of the Lake of the Ozarks?</p> <p>16 A. Yes.</p> <p>17 Q. And what would that be?</p> <p>18 A. I just -- I think people read that and a lot 19 of times they -- you know, they take the headlines to 20 be gospel and they never follow up on it, and in 21 their minds, you know, they feel like the lake is 22 full of -- is just polluted. And they can't tell 23 enough people about that.</p> <p>24 Q. Can you give the Hearing Officer some 25 information about the magnitude in dollars that we're</p>
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<p>1 Q. Okay. Now come forward. You mentioned 2 another time where there was an actual discharge, a 3 leak in a sewer line; is that right?</p> <p>4 A. Correct.</p> <p>5 Q. And what were the headlines in the papers?</p> <p>6 A. My memory serves me -- and it's been 7 awhile -- that the headlines were "Raw Sewage Pours 8 Into Lake of the Ozarks."</p> <p>9 Q. And was there an adverse impact on the 10 economy, the livelihood of the people in and around 11 Lake of the Ozarks as a result of that?</p> <p>12 A. Yes. I think not only in the tourism 13 business but in the second home industry. What we 14 sell at Lake of the Ozarks is a clean lake, a 15 pristine lake, a beautiful place to come and visit, 16 and when the headlines say otherwise, that comes with 17 a price.</p> <p>18 Q. Mr. Gognan, what would be your expectation 19 if there is a spill from one of the forced main lines 20 into the Osage River or an event that requires a 21 shutdown of the treatment plant such that the lift 22 stations and pump stations back up and spill sewage 23 into Lake of the Ozarks?</p> <p>24 A. I think the headlines would be devastating, 25 and rightfully so. I mean, that's -- our charge is</p>	<p>1 talking about on the tourism impact in the Lake of 2 the Ozarks region?</p> <p>3 MR. BROWNLEE: I'm going to object, 4 your Honor. There's been absolutely no foundation as 5 to what kind of leak, how long it might last, the 6 amount that might go in, where it might go in. I 7 mean, this is just absolute speculation. With all 8 due respect, I mean, I think he can testify generally 9 that it's going to be harm, and he's already 10 testified to that. I mean, I think that's common 11 knowledge, truthfully.</p> <p>12 HEARING OFFICER: Mr. Mauer, 13 response?</p> <p>14 MR. MAUER: My question was about the 15 size of the economy and the economic impact that the 16 lake has. I was not asking about --</p> <p>17 HEARING OFFICER: Is this a 18 foundational question to a study that Mr. Gognan has 19 done?</p> <p>20 MR. MAUER: I believe that given his 21 capacity as president of the largest --</p> <p>22 HEARING OFFICER: That wasn't my 23 question, Counselor. Is this a foundational question 24 to a study that Mr. Gognan has done on the economic 25 impact of shutting down the sewer system?</p>

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<p>1 MR. MAUER: I'm not going to ask him 2 the impact of shutting down the system. 3 HEARING OFFICER: No. No. 4 MR. MAUER: I'm confused, then, sir. 5 HEARING OFFICER: Has this witness 6 done an economic study? 7 MR. MAUER: No, sir. Not to my 8 knowledge. 9 HEARING OFFICER: Okay. Then -- 10 MR. MAUER: That's not what I was 11 asking, though. 12 HEARING OFFICER: You wanted to know 13 the economic impact on the shutdown of the plant or a 14 break in the sewer lines. 15 MR. MAUER: No, sir. If that was my 16 question, I apologize. 17 HEARING OFFICER: Hold just a moment. 18 MR. MAUER: I'm sorry if that was my 19 question. That was not what I intended. 20 HEARING OFFICER: Would you read the 21 question back. 22 (Whereupon, the requested portion of 23 the record was read by the reporter as follows.) 24 HEARING OFFICER: The objection is 25 sustained as to that question.</p>	<p>1 involves the impact that we might -- it might have on 2 the Lake of the -- 3 MR. BROWNEE: I'm going to object to 4 that, your Honor. Under your order of January 28th, 5 2008, you specifically stated "Any proffered 6 testimony from individual Petitioners on the matters 7 of noise pollution, traffic, dust outside the mining 8 site, blasting activities, property devaluation and 9 potential impact on business will only be received to 10 maintain the record as an offer of proof," and he's 11 getting ready to testify to the potential impact 12 on -- of a break that we don't know anything about on 13 the business down there, and that's -- you've ruled 14 on this matter, and I'll again renew my objection. 15 HEARING OFFICER: The ruling still 16 stands. I will permit -- rather than going through 17 the gyrations of having Counsel state what the offer 18 of proof would be, I will take this as an offer of 19 proof. The objection is sustained under my previous 20 order. 21 MR. BROWNEE: Thank you. 22 HEARING OFFICER: The question was 23 the reason that you were here testifying today, so 24 you may proceed to testify, Mr. Gognan. 25 A. As I stated before, the lake, in my opinion,</p>
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<p>1 Q. (By Mr. Mauer) And I'm sorry, Mr. Gognan, 2 if I asked a bad question. I'm not asking about the 3 impact of a break. Okay? I didn't mean that. What 4 I meant was, do you have some knowledge about the 5 tourism dollars generated and the economy, the size 6 of the economy, in the Lake Ozark area? That's what 7 I'm talking about. How many dollars are we talking 8 about being generated down at the Lake of the Ozarks 9 area? 10 A. The -- you know, the tourism business is a 11 big business in the lake area, and the... I don't 12 have any specific dollar amount I could put on it, 13 other than it is a significant, you know, amount of 14 revenue that's generated from the tourism business 15 and the second home industry. 16 Q. Are we talking hundreds of thousands, 17 millions, multiple millions? 18 A. I would say we're in the millions. And I 19 think the City's sales tax revenues, I think, could 20 probably speak to that. 21 Q. Thank you. Just to finish up, Mr. Gognan, 22 why are you here today? Why did you make the trip 23 from Lake of the Ozarks to come here today and offer 24 testimony to this Hearing Officer? 25 A. Well, number one, I think this issue</p>	<p>1 is the reason that everything exists down at Lake of 2 the Ozarks, so any issue that comes up, whether it be 3 this issue or any other issue that's going to have an 4 impact on the lake, we take that very seriously and 5 vigorously do what we can to make sure whatever 6 happens happens in the best interest of the lake, and 7 that's why I'm here today. 8 Q. Thank you. One other thing. I almost 9 forgot. Mr. Gognan, do you have any personal 10 experience on what happens if a sewage system fails? 11 Do you have any personal experience as an individual 12 homeowner? 13 A. We did have an experience with that in the 14 mid '80s. We were living in a subdivision called 15 Summit Point Estates. We were on the lake. We had a 16 lift station at our residence that pumped the sewage 17 up to the road where there was a lift station, and 18 both stations failed, and we had raw sewage come into 19 our master bedroom. 20 Q. Did it cost -- do you have an estimate on 21 what the cost was to you and your family as a direct 22 cost as a result of that sewer system failure? 23 A. I do not. Because of the failure, the 24 City -- the City covered those expenses. It was a 25 failure at the lift station in the street, and so I</p>

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<p>1 don't -- I don't know the cost, but it was -- I'm 2 sure it was significant. 3 Q. And that was an expense that the City had to 4 bear because the City's sewer system failed? 5 A. Correct. 6 MR. MAUER: Nothing further. 7 HEARING OFFICER: Mr. Duggan, do you 8 have any cross-examination of the witness? 9 MR. DUGGAN: No, I do not. 10 HEARING OFFICER: Thank you. Mr. 11 Brownlee? 12 EXAMINATION 13 QUESTIONS BY MR. BROWNLEE: 14 Q. Mr. Gognan, my name is Richard Brownlee. 15 I'm an attorney in Jefferson City with the law firm 16 of Hendren & Andrae. Initially on the record I'd 17 like to reveal that my law firm is on retainer with 18 Central Trust Bank. You may or may not know that, 19 but I did want to make that clear in my question. I 20 just think it's significant that -- 21 HEARING OFFICER: Thank you, Mr. 22 Brownlee. 23 Q. (By Mr. Brownlee) Having said that, are 24 you -- your bank is part of a holding company, is it 25 not?</p>	<p>1 Beach is a significant depositor and customer of 2 yours; is that correct? 3 A. That's correct. 4 Q. Is there a reason why you're not a named 5 participant -- and I say you, I mean Central Bank -- 6 in this proceeding? 7 A. I don't know. 8 Q. And you're not here appearing as an expert 9 except -- on any expert opinion, are you, sir? 10 A. Correct. 11 Q. Have you visited the Magruder site that 12 we're talking about here? 13 A. I have driven by it. I have not walked the 14 site. 15 Q. Do you know anything about the plans where 16 the mining will occur? 17 A. I've seen a plat that shows in my 18 observation the lines going through the middle of the 19 site. That's the extent of my knowledge. And with 20 the treatment plant being just beyond the site. 21 Q. Well, if you'd look at the exhibit there, 22 the red line is the sewer line going down -- or up to 23 the plant which is north to the Osage River, and you 24 can see the Magruder property. Is that what you've 25 seen?</p>
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<p>1 A. Yes. 2 Q. And what is the name of that holding 3 company? 4 A. Central Bank Company. 5 Q. And how many total banks are involved in 6 that organization? 7 A. I want to say 13 or 14. We've just had some 8 recent acquisitions, so that would be in that area, 9 13 or 14. 10 Q. Now, is Central Bank a petitioner in this 11 proceeding? 12 A. No. 13 Q. And are you appearing here on -- as a 14 corporate representative of Central Bank or are you 15 appearing here personally? 16 A. Both. I believe that I'm here as president 17 of Central Bank, Lake of the Ozarks. I feel that one 18 of my responsibilities is to be involved in the 19 community and do what I think is deemed to be in the 20 best interest of the community. And then also 21 personally for the same reasons. 22 Q. And, in fact, the Mayor asked you to appear 23 here, did she not? 24 A. Yes, she did. 25 Q. And your bank, I believe the City of Osage</p>	<p>1 A. Yes, sir. 2 Q. But in terms of any details that the 3 Magruder site, where they intend to mine, volumes, do 4 you have any information on that? 5 A. No, I do not. 6 Q. And I'll ask you the same questions 7 regarding the construction of this pipeline. Do you 8 have any knowledge as to how it was constructed? 9 A. No, I do not. 10 Q. Do you know anything about the materials 11 involved in that construction? 12 A. No, I do not. 13 Q. Do you know the type of pipe that's in that 14 construction? 15 A. No, sir. 16 Q. Do you know anything about the types of 17 breaks or problems that could occur at a line like 18 this? 19 A. No, I do not. 20 Q. Do you know whether natural disasters could 21 cause the same kind of problem? 22 A. No, I do not. 23 Q. Well, we've had an earthquake here, you 24 know, a couple of weeks ago. Something like that, do 25 you know whether it could cause a similar problem?</p>

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<p>1 A. I do not.</p> <p>2 Q. Do you know whether the City of Osage Beach</p> <p>3 presently has any remediation plan to take care of</p> <p>4 disasters such as a pipeline break?</p> <p>5 A. I do not.</p> <p>6 Q. And you've done no economic study to support</p> <p>7 the concerns that you've talked about here today,</p> <p>8 correct?</p> <p>9 A. That would be correct.</p> <p>10 Q. And if this break occurred on the Magruder</p> <p>11 property, would it -- would your concerns be any</p> <p>12 different if this pipeline broke right here that</p> <p>13 wouldn't even be on the Magruder property and if the</p> <p>14 flow went down into the lake? Would your concerns be</p> <p>15 any different if that's where the break occurred?</p> <p>16 A. No.</p> <p>17 Q. And you said your concern regarding the</p> <p>18 pipeline is that it could cause wear on the pipe or</p> <p>19 the treatment plant. That was your concern?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And have you seen any scientific evidence to</p> <p>22 support that concern?</p> <p>23 A. No, sir.</p> <p>24 Q. Now, I think Mr. Mauer asked you about other</p> <p>25 quarries. You said that in your experience -- and I</p>	<p>1 in dump trucks?</p> <p>2 A. Yes, sir.</p> <p>3 Q. And do you know what the diesel fuel right</p> <p>4 now for dump trucks is?</p> <p>5 A. High.</p> <p>6 Q. 4 bucks a gallon?</p> <p>7 A. (Nods.)</p> <p>8 Q. Do you know what -- if Magruder's site is</p> <p>9 not open, do you know where the nearest next quarry</p> <p>10 site would be located?</p> <p>11 A. No, I do not.</p> <p>12 Q. Do you know where the Sunrise Beach quarry</p> <p>13 is?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Do you know how far that is -- and that's a</p> <p>16 Magruder operation. Do you know how far that is from</p> <p>17 most of the work to be done on this project?</p> <p>18 MR. MAUER: I'm going to object.</p> <p>19 Vague and ambiguous. The witness testified the</p> <p>20 Highway 54 project is a big project, so to say most</p> <p>21 of the work being done is vague and ambiguous. It's</p> <p>22 the distance from Sunrise Beach.</p> <p>23 MR. BROWNLEE: I'll take the word</p> <p>24 "most" down.</p> <p>25 HEARING OFFICER: The question has</p>
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<p>1 know your experience there, I've personally had it --</p> <p>2 you said there had been no rock shortage as far as</p> <p>3 you know so far in the development, correct?</p> <p>4 A. That is correct.</p> <p>5 Q. And this is -- the Highway 54 project is a</p> <p>6 \$200 million project, correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Do you know the source, the primary source,</p> <p>9 of rock that's to go onto this project?</p> <p>10 A. No, I do not.</p> <p>11 Q. You don't know that Magruder is the rock</p> <p>12 supplier?</p> <p>13 MR. MAUER: Objection. Assumes facts</p> <p>14 not in evidence. There's been no evidence it is the</p> <p>15 primary source.</p> <p>16 HEARING OFFICER: Sustained.</p> <p>17 Q. (By Mr. Brownlee) Do you know the volume of</p> <p>18 rock to be required on the Highway 54 project?</p> <p>19 A. No, I do not.</p> <p>20 Q. Do you know anything about whether there's</p> <p>21 economic reasons that other quarries in the area</p> <p>22 can't economically be used to supply rock to that</p> <p>23 project?</p> <p>24 A. No, I do not.</p> <p>25 Q. Do you understand that rock is transported</p>	<p>1 been rephrased.</p> <p>2 Q. (By Mr. Brownlee) Do you know how far the</p> <p>3 Sunrise Beach quarry is from, let's just say from the</p> <p>4 City of Osage Beach City Hall?</p> <p>5 A. I do not know the exact distance. I could</p> <p>6 guess if you want me to guess.</p> <p>7 Q. I don't want a guess. And regarding other</p> <p>8 locations, you've mentioned Sunrise Beach. Do you</p> <p>9 know if there are any others?</p> <p>10 A. I didn't mention Sunrise Beach.</p> <p>11 Q. I did.</p> <p>12 A. My limited knowledge, I understand a lot of</p> <p>13 highway projects actually put in their own quarry,</p> <p>14 whoever the contractor is, and quarry the rock</p> <p>15 through the project.</p> <p>16 Q. Do you know if that's going to be done in</p> <p>17 this case?</p> <p>18 A. No, I do not know.</p> <p>19 Q. And regarding other locations, do you know</p> <p>20 the quality of rock at those locations?</p> <p>21 A. No, I do not.</p> <p>22 Q. Do you know the volume available at those</p> <p>23 locations?</p> <p>24 A. I do not.</p> <p>25 Q. Do you know whether those locations have the</p>

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<p>1 volume available to supply the rock for this project?</p> <p>2 A. I do not.</p> <p>3 Q. And what's the name of that project right</p> <p>4 kind of... Prewitt's Point. I'm sorry. I had that</p> <p>5 on the tip of my tongue, and it slipped off. Can you</p> <p>6 show where that's located on that map? Or it's not</p> <p>7 on it, is it?</p> <p>8 A. I would think that it's going to be...</p> <p>9 Let's see here. There's the river, so it's gotta</p> <p>10 be -- I would think it's gotta be in this area in</p> <p>11 here.</p> <p>12 Q. It's not on there.</p> <p>13 A. Oh, you're talking about the current</p> <p>14 development?</p> <p>15 Q. Yeah.</p> <p>16 A. I'm thinking of the next one. Actually, I</p> <p>17 think there may be something there, but it would be</p> <p>18 further -- it would be further down here. It's right</p> <p>19 behind the -- you're talking about the piece behind</p> <p>20 the bank?</p> <p>21 Q. Yeah. Sure.</p> <p>22 A. I think it would be further down there.</p> <p>23 Q. Do you know whether there was blasting in</p> <p>24 the construction of that?</p> <p>25 A. For that?</p>	<p>1 that.</p> <p>2 Q. So if there had been blasting right behind</p> <p>3 the bank, do you think you'd have heard it as</p> <p>4 president?</p> <p>5 A. Yes.</p> <p>6 MR. MAUER: Well, I'm going to</p> <p>7 object. It calls for speculation. There's no</p> <p>8 evidence on the record that there was any blasting on</p> <p>9 Prewitt Point.</p> <p>10 MR. BROWNLEE: I'll withdraw the</p> <p>11 question.</p> <p>12 HEARING OFFICER: The question has</p> <p>13 been withdrawn.</p> <p>14 Q. (By Mr. Brownlee) I think you testified --</p> <p>15 and this is my last question -- that your biggest</p> <p>16 concern really was involved more around the</p> <p>17 reputation damage that a spill like this could cause</p> <p>18 to the lake; is that correct?</p> <p>19 A. Yes. I think that's not my only concern,</p> <p>20 but it is the main concern. We have a -- I think a</p> <p>21 very challenging and delicate system to manage the</p> <p>22 way it is without any more variables, without any</p> <p>23 man-made variables. We have our hands full taking</p> <p>24 care of this treatment system. And the welfare, the</p> <p>25 success of Lake of the Ozarks, in my opinion, is the</p>
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<p>1 Q. Yes.</p> <p>2 A. I don't know about blasting. I know about</p> <p>3 where a lot of dirt was brought from.</p> <p>4 Q. And rock that was put in there?</p> <p>5 A. Was it from the parking lot there at --</p> <p>6 where the World Wide Church of God used to be?</p> <p>7 Q. So your -- and your bank is how close to</p> <p>8 that project?</p> <p>9 A. Oh, we'd probably be probably a mile, mile</p> <p>10 and a half.</p> <p>11 Q. From the Prewitt Point?</p> <p>12 A. Yeah.</p> <p>13 Q. Right behind you?</p> <p>14 A. Not the Point, but are you talking --</p> <p>15 Q. The development where Lowe's and Hy-Vee is?</p> <p>16 A. I'm familiar with that, but I thought you</p> <p>17 were talking about where they got the dirt from and</p> <p>18 the rock. That development is right behind the bank.</p> <p>19 Q. Correct. And do you know whether there was</p> <p>20 blasting on that development right behind the bank?</p> <p>21 A. Well, actually behind the bank, I mean, they</p> <p>22 brought all that in.</p> <p>23 Q. You don't know if a lot of that rock was</p> <p>24 blasted right there at the site?</p> <p>25 A. I don't know. I don't know the answer to</p>	<p>1 key to it. The number one thing we have to do is</p> <p>2 protect the quality of the lake, and in my opinion we</p> <p>3 have to exhaust our efforts to do that, and I think</p> <p>4 that that is -- yes, that is the biggest concern that</p> <p>5 I have.</p> <p>6 Q. And for -- and I know that your concern is</p> <p>7 the lake, but if there would be a catastrophic damage</p> <p>8 to that pipe, in fact, the sewage release wouldn't go</p> <p>9 into the Lake of the Ozarks at all, would it?</p> <p>10 A. I don't think that's an accurate statement.</p> <p>11 Q. It would go into the river, wouldn't it?</p> <p>12 A. It would -- here's what I think would</p> <p>13 happen: And we've already established my knowledge</p> <p>14 is very limited, but you're asking me the question.</p> <p>15 I think whatever's in the main line there heading</p> <p>16 down to the treatment plant would go into the river,</p> <p>17 but my experience was personally whatever keeps</p> <p>18 coming through the system -- and I don't believe</p> <p>19 people don't use the system even though they may be</p> <p>20 requested to, I think you'll still have continued</p> <p>21 use. If they shut down the treatment plants or the</p> <p>22 lift stations, then you're going to have a lot of</p> <p>23 that backing up into those lift stations, and those</p> <p>24 things -- we're moving so much wastewater treatment,</p> <p>25 and it will come back so fast that we're going to</p>

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<p>1 have it all over the place.</p> <p>2 Q. But do you have -- that testimony you just</p> <p>3 gave, is that based on, again, any scientific</p> <p>4 analysis or just purely your opinion?</p> <p>5 A. It is based on what I've experienced and</p> <p>6 seen in the past.</p> <p>7 MR. BROWNLEE: Okay. I've got</p> <p>8 nothing further. Thank you.</p> <p>9 HEARING OFFICER: Redirect,</p> <p>10 Mr. Mauer?</p> <p>11 MR. MAUER: Nothing further.</p> <p>12 HEARING OFFICER: All right. The</p> <p>13 Hearing Officer has no questions of the witness. The</p> <p>14 witness is excused. Thank you for your testimony,</p> <p>15 Mr. Gognan.</p> <p>16 With that, we will take our noon recess.</p> <p>17 Let me inquire, Mr. Mauer, how many more fact</p> <p>18 non-deposed witnesses or non-experts do you have this</p> <p>19 afternoon?</p> <p>20 MR. MAUER: I'm sorry. Non-deposed</p> <p>21 or non-expert?</p> <p>22 HEARING OFFICER: Well, witnesses</p> <p>23 that you are ready to offer this afternoon.</p> <p>24 MR. MAUER: I would have three for</p> <p>25 sure.</p>	<p>1 and if we have time Mayor Lyons will be presented.</p> <p>2 And as I understand, if we're able to get through</p> <p>3 that, Mr. Mauer, that will conclude all but the Joint</p> <p>4 Board's expert witness, as well as the Applicant's</p> <p>5 expert witnesses subject to any rebuttal witnesses?</p> <p>6 MR. MAUER: We identified some other</p> <p>7 fact witnesses that I just don't have here today</p> <p>8 because I knew we wouldn't have time.</p> <p>9 HEARING OFFICER: All right. Then I</p> <p>10 will be sending out by e-mail an order confirming the</p> <p>11 additional dates, and once that is sent out, then</p> <p>12 probably closer to May 23rd I will ask identification</p> <p>13 relative to those witnesses so we can more or less</p> <p>14 address how we're going to take the testimony,</p> <p>15 understanding that we may have some issues relative</p> <p>16 to when experts can testify. So we'll work through</p> <p>17 that. With that, Mr. Mauer, are you ready to recall</p> <p>18 Mr. King?</p> <p>19 MR. MAUER: Yes, I am.</p> <p>20 HEARING OFFICER: Mr. King, if you</p> <p>21 will come forward, please, and take the witness</p> <p>22 chair. I remind you you are still under oath from</p> <p>23 yesterday. And we had finished the direct...</p> <p>24 MR. MAUER: No.</p> <p>25 HEARING OFFICER: You still have</p>
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<p>1 HEARING OFFICER: You're going to</p> <p>2 recall Mr. King?</p> <p>3 MR. MAUER: Yes, we're going to</p> <p>4 finish with Mr. King.</p> <p>5 HEARING OFFICER: All right. And who</p> <p>6 else?</p> <p>7 MR. MAUER: Then we have Mr. Edelman</p> <p>8 who is the city engineer. He will be very short.</p> <p>9 And then if there is time Mayor Lyons.</p> <p>10 HEARING OFFICER: All right. Well,</p> <p>11 let's see if we can move along expeditiously and get</p> <p>12 all of those taken care of.</p> <p>13 MR. MAUER: I've certainly done my</p> <p>14 best.</p> <p>15 HEARING OFFICER: Yes, you have. Can</p> <p>16 we take and be back at 1:00? Does that meet</p> <p>17 everybody's schedule?</p> <p>18 MR. BROWNLEE: Yeah. I've ordered</p> <p>19 lunch.</p> <p>20 HEARING OFFICER: All right. Then</p> <p>21 we're adjourned until 1:00 and we're off the record.</p> <p>22 (Luncheon recess.)</p> <p>23 HEARING OFFICER: The hearing will</p> <p>24 come to order. Our agenda for the afternoon is to</p> <p>25 continue the testimony of Mr. King, then Mr. Edelman,</p>	<p>1 direct examination?</p> <p>2 MR. MAUER: Yes, I do.</p> <p>3 HEARING OFFICER: Don't mean to hurry</p> <p>4 you along. All right. Proceed, then, Mr. Mauer,</p> <p>5 with your direct examination.</p> <p>6 MR. MAUER: I assure the Court I am</p> <p>7 doing my best to move through.</p> <p>8 EXAMINATION</p> <p>9 QUESTIONS BY MR. MAUER:</p> <p>10 Q. Mr. King, I want to just make sure that we</p> <p>11 didn't rush through the final point of your testimony</p> <p>12 yesterday where we left off. You were telling us</p> <p>13 about the cascade effect or domino effect that might</p> <p>14 happen if you have a break on the 18-inch or 24-inch</p> <p>15 lines as they run into the sewage treatment plant.</p> <p>16 Do you remember where we left off your testimony?</p> <p>17 A. Yes.</p> <p>18 Q. All right. Can you just again, so we're all</p> <p>19 clear, explain to the Hearing Officer what would</p> <p>20 happen if we have a break on this final downhill</p> <p>21 ascent -- or descent into the sewage treatment plant?</p> <p>22 If the lines break there, what's going to be the</p> <p>23 impact on the other part of the Osage Beach sewer</p> <p>24 system?</p> <p>25 A. Well, immediately the contents in that pipe,</p>

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1 it's under pressure, it's full, would be released in
2 the immediate area of the break. And at that point,
3 to be able to make the necessary repairs, whatever
4 they may be in that area, the flow would have to be
5 stopped on that pipe. In order to do that, we would
6 have to start shutting down -- the first rule would
7 be to shut down the major lift stations that feed to
8 that line. And as those filled up and as time goes,
9 then the smaller stations behind those would have to
10 be shut down.

11 Q. Okay. Let's talk about that shutdown
12 process. Just to get a picture of how long that
13 might take, if I asked you to go back to Osage Beach
14 today and start shutting down lift stations, all
15 right, just going to each one and shutting them down,
16 how long would that take?

17 A. Well, assuming that I was efficient and I
18 was working an eight-hour day, I would say that I
19 could probably complete a lift station -- some are
20 going to be closer than others, but probably
21 15-minute interval, so that would be four an hour,
22 maybe 32 a day. If I worked eight hours a day
23 five days a week, it would take me approximately
24 between two and two and a half months.

25 Q. Just to shut down the lift stations?

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1 on the smaller stations of two hours. That would be
2 a general rule of thumb.

3 Q. So if you had to shut down the lines and it
4 backs up because of a break, within two hours the
5 lift stations would be backing up beyond their
6 capacity?

7 A. Some of the stations would have that
8 two-hour redundancy. As a rule, the larger stations
9 do not have that two-hour holding capacity. If they
10 have a standby generator, normally that capacity is
11 built in for electrical outages or component failures
12 in that particular station.

13 Q. If there are these electrical generators,
14 what would be the standby capacity for those lift
15 stations?

16 A. I don't have a definitive answer for that.

17 Q. Do you have any sense of how long it would
18 be before sewage would start flowing out of those
19 lift stations?

20 A. Again that's going to vary on the location
21 and the lift station itself, but I would say some as
22 soon as 30 minutes.

23 Q. If a break occurs on that last final descent
24 into the sewage treatment plant, is there any way you
25 believe that you could shut off the system, get out

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1 A. Yes, sir.

2 Q. All right. Now, how many people work for
3 you in your department?

4 A. Seven.

5 Q. So even if you had all seven available and
6 sent them out on an emergency basis to start shutting
7 down lift stations, is that something you could do in
8 a matter of minutes?

9 A. No, sir.

10 Q. Do you believe you'd be able to even get all
11 of the lift stations shut off before sewage would be
12 seeping out onto the ground?

13 A. No, sir.

14 Q. The cascade effect, the lift stations, do
15 they have some internal capacity so that if a back-up
16 occurs they're going to -- the sewage isn't
17 immediately going to go out onto the ground?

18 A. Yes, sir.

19 Q. And how long is that back-up capacity?

20 A. Well, that varies. The reason that it
21 varies is that there are different volumes of flow to
22 each different lift station depending on the usage,
23 whether we've got a commercial laundry going or we've
24 got homeowners showering, whatever that may be, but
25 the general rule of thumb would be a design capacity

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1 there, fix it and then restart all the lift stations
2 before sewage starts spilling out into the ground?

3 A. No possible way.

4 Q. As you look at all of the green lines that
5 are on BP-26, if there is one spot that is the worst
6 spot for a potential break to occur, for damage to
7 the lines, if you could just indicate for the Hearing
8 Officer, where would you say is the worst spot that
9 could create the most damage and danger in the whole
10 system?

11 A. Well, it would certainly be between D
12 Highway and the treatment plant.

13 Q. Could you point that to us?

14 A. It would be to where these two lines come
15 together and into the treatment plant, through this
16 area.

17 Q. And is that the final downhill descent that
18 we've been talking about where the sewage runs
19 straight from there into the treatment plant?

20 A. Yes, sir.

21 Q. At that point is there any redundancy in the
22 City's system so that the sewage could be diverted
23 into another pipe or anything like that?

24 A. No, sir.

25 Q. All right. Now, there was some questioning

37 (Pages 142 to 145)

1 about capacity and perhaps capacity in the lines.
2 Are you familiar with a capacity in a gravity line
3 versus a forced main?

4 A. Yes, sir.

5 Q. Can you explain for the Hearing Officer what
6 the capacity might be in a typical gravity line?

7 A. Well, in a gravity line -- the intention of
8 a gravity line is just what it says. The flow is
9 gravity fed downhill to a point where you're trying
10 to deliver the liquid. And typically in a gravity
11 line it has -- it has capacity fluctuations in that
12 the normal flow in it may be one-tenth of the
13 diameter of the pipe, and as the flow increases, it
14 may go to 50 percent of that pipe, and it has that
15 variance on a gravity line.

16 In a pressure system, a pressure line,
17 there is no air space. That pipe remains full. As a
18 matter of fact, on the pressure line, we would
19 strategically locate pressure or air relief valves in
20 that line as not to form air bubbles. An air bubble
21 in the top -- the pressure line runs like this. If
22 you get an air bubble in it and it became lodged at
23 the top of one of those hills, the pumps are not
24 designed to push against that head, in other words,
25 to move that air bubble downhill. It cannot do that,

1 thereby what we would call an air lock in that
2 system, and that's why they have air relief valves in
3 them.

4 So there is no -- the pipe is completely
5 full of liquid, wherein a gravity line there is very
6 little liquid, in relationship to the two.

7 Q. And so when you testified yesterday about
8 the over 100 miles of forced main, those pipes are
9 full of sewage all the time?

10 A. Yes, sir, with the exception that you may
11 have a downhill run. When the pumps kick on, it
12 would pull a siphoning effect and maybe lessen the
13 liquid in that line and cumulate air bubbles in that
14 area, and therefore you would have an air relief
15 valve and some mechanism to relieve the air in that
16 line, but very little space would be available.

17 Q. So if you had to cap off the system at the
18 top of the hill before the lines head down to the
19 sewage treatment plant, is there built-in capacity
20 within the lines themselves for the sewage to just
21 back up during the period of time? Is there any
22 capacity in those lines at that point?

23 A. No, sir.

24 Q. The 18-inch main, are you familiar with
25 where the 18-inch main runs throughout the City?

1 A. Yes, sir.

2 Q. Have you had experience where that 18-inch
3 main has been damaged and actually broken?

4 A. I may explain the system a little bit
5 further.

6 Q. Please do.

7 A. The 18-inch would be at the end of the
8 system where the two tie together.

9 Q. Go ahead and stand up and show it to Mr.
10 Tichenor.

11 A. What I'm talking about is the main that we
12 call -- we're calling the 18-inch main. When it gets
13 to this area, it goes to 16 this way and 12 that way,
14 so some of the bigger mains they finally turn into
15 18-inch where it crosses here. That's right here.

16 Q. Is the system, the 18-inch line, is it PVC
17 pipe throughout much of its -- much of the area that
18 it runs through?

19 A. Yes, sir.

20 Q. Have you had experience with that PVC line
21 being damaged?

22 A. Yes, sir.

23 Q. All right. Can you tell us about an
24 occasion where construction activities caused that or
25 were occurring when that line broke? Can you explain

1 that situation to Mr. Tichenor?

2 A. Yes, sir. I recall, I would say it was in
3 probably '98 or '99. They were in the process of
4 Prewitt Point building and they were going to
5 relocate D Highway. D Highway originally went
6 through the middle of the Prewitt Point as it is
7 today. During that time, on the, I would call it the
8 south side of the original D Highway, they were
9 digging to get to final grade, and alongside of D
10 Highway, which is where our -- that forced main was
11 located, and it was 18-inch in that area, they dug
12 approximately 20 to 25 feet along the existing D
13 Highway, and that was going to be the finished grade,
14 and during that excavation, the 18-inch forced main
15 blew out the side of that fill -- of that cut.

16 Q. Okay. So did the construction process even
17 actually touch the forced main?

18 A. No, sir.

19 Q. So it wasn't like they hit it with a backhoe
20 or something else. They didn't actually even have to
21 physically touch the forced main?

22 A. No.

23 Q. And when you say "blew out the side," can
24 you describe that for Mr. Tichenor, what you mean?

25 A. Well, the dirt, the material, was moved away

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1 from the side of the pipe, I want to say within a
2 couple of feet of that pipe. The existing ground was
3 left intact on top of it, and the pipe just bulged
4 and where the joints were came apart.

5 Q. And what happened when that line blew out
6 the side of the wall?

7 A. Well, fortunately, they were digging in that
8 area and had a large pit area there, and the entire
9 volume that was in that pipe spilled out into that --
10 their hole that they were working on.

11 Q. Do you have an estimate of approximately how
12 much raw sewage spilled out onto the ground in that
13 event?

14 A. The estimate in the report, if I seem to
15 recall, was 150,000 gallons.

16 Q. And how long did it take for 150,000 gallons
17 to flow out onto the ground from that one forced main
18 being burst?

19 A. Approximately 30 minutes.

20 Q. So in 30 minutes, 150,000 gallons of raw
21 sewage escaped out onto the ground?

22 A. Yes, sir.

23 Q. What are the flows like running through that
24 line today as compared to what the flows were back
25 when that rupture occurred?

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1 A. The flows in that line are going to be
2 comparable to what they are today, and the reason
3 being is since that time, we have installed an
4 additional line, the 24-inch, to the treatment plant.
5 Before that 24-inch was put in, all the flow went
6 through that 18-inch.

7 Q. Okay. So there's nothing that's changed
8 today that would make that line any less sensitive or
9 in any way more protected than what it was back then
10 when the break occurred?

11 A. That line was relocated in '98.

12 Q. Okay.

13 A. After that occurred.

14 Q. I understand. But the line -- all I'm
15 trying to get to is, there's nothing that exists
16 today that somehow the 18-inch line is more protected
17 or in any way less sensitive to outside pressures
18 than what it was back then?

19 A. Correct.

20 Q. That's what I meant. Thank you. I
21 apologize if I asked a bad question. Are you
22 aware -- what did you have to do with the
23 150,000 gallons of raw sewage?

24 A. Well, as I stated, it was captured in the,
25 for lack of better terminology, the pit that they had

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1 dug and it was removed and sent back -- after the
2 repairs were made, it was pumped out by pumper trucks
3 and sent back to the treatment plant.

4 Q. Do you recall how long it took the pumper
5 trucks to clean up the 150,000 gallons?

6 A. I don't remember exactly, but it would have
7 been somewhere in four or five days.

8 Q. So raw sewage laid out on the ground for at
9 least over three days?

10 A. Well, they pumped the bulk of the sewage
11 out, but to clean up the silt and the residue that
12 was left over took the additional time.

13 Q. Okay. Were you able to -- as a result of
14 where that break occurred, were you able to shut off
15 the flow without shutting down the rest of the system
16 or having major back-ups of other lift stations?

17 A. In that particular instance, the procedure
18 that we used at that time was to go to all the major
19 lift stations and turn them on by hand and actually
20 pump them dry physically while they were getting --
21 we had a pit there -- while they were getting their
22 material and repair pieces in place. And we were
23 able to -- they had a new line -- as I said, they had
24 a new line that they were relocating, and when we
25 pumped all those facilities down, the major lift

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1 stations, by hand, in other words, turning on the on
2 position and make it pump empty, which is beyond
3 their normal cycle, we were able to then turn those
4 back off and allow them the hour or two to make that
5 connection back to make the repair.

6 Q. If the line hadn't been exposed and in the
7 process of construction, would you have been able to
8 make the repair in that quick of turnaround as you
9 were able to in that situation?

10 A. Depending on the type of break, no. In
11 other words, if it had a smaller feeder line going
12 into it that broke, we could probably do that in that
13 amount of time, but the entire pipe being severed,
14 no. The answer to that is no.

15 Q. Let's talk about are you aware of another
16 break that may have occurred along that 18-inch line?

17 A. Yes. We had a major break on that line
18 in -- I believe it was in 1995.

19 Q. Okay. Do you remember earlier when
20 Mr. McDonald testified about potentially placing
21 spoils materials or unused rock on top of the
22 pipeline easement? Do you remember that testimony
23 from yesterday?

24 A. Yes, sir.

25 Q. All right. Are you aware of a situation

39 (Pages 150 to 153)

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1 where rock was placed on top of the City's 18-inch
2 line?

3 A. Yes, sir.

4 Q. And can you tell the Hearing Officer what
5 happened on the occasion -- on that occasion that
6 you're familiar with?

7 A. It was in the early spring of '95, I
8 believe, and we got a phone call from the treatment
9 plant that our flows had dropped very low. And we
10 sent our crews out in different areas to try to
11 locate if we could find out what was wrong with our
12 flow, obviously to major lift stations and to major
13 trunk lines first. We found a sewage that was coming
14 up out of the ground next to a storm sewer, and there
15 was obviously a rupture of some sort in the line.

16 Q. And how long did it take you to even find
17 where the sewage was leaking?

18 A. Well, we went back on each side of the --
19 where the sewage was coming up, we started digging in
20 there and couldn't locate the line. We had some
21 connections that were a couple of hundred feet on
22 each side of that main that we could trace to the
23 main, and so we went to those ends and started
24 digging, and we traced the main down with a machine
25 to, if I remember, it was somewhere between 15 to

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1 25 feet deep. We actually had cranes holding
2 billboards and telephone poles up.

3 At that time we had the Department of
4 Natural Resources -- we called them and had them on
5 the scene, the Jeff City regional office at that
6 time, and after a couple of days of digging in there,
7 it was determined that we needed to emergency lay a
8 new forced main through the entire area.

9 We encountered heavy what I would call
10 shot rock, just big rock of varying sizes, from
11 little to big, on top of that area, making it pretty
12 difficult to dig in. Plus it was deemed unsafe to go
13 that deep, any deeper than that.

14 Q. And do you know -- if I understand this
15 right, what you're telling us, then, rock or shot
16 rock had been laid on top of the sewer line?

17 A. That's what it appeared to be to me. And
18 also, I was told that by various people that that's
19 what happened. There was a low spot, and after the
20 sewer line was built, the rock had been placed on top
21 of that low spot, therefore filling that up.

22 Q. Okay. And did the sewer line -- do you know
23 how much sewage was escaped or was exposed and got
24 out of the pipe in that instance?

25 A. We had reports and we had help from DNR

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1 estimating those flows at that time, and I'm sure
2 I'll be plus or minus a little bit here, but the best
3 I recall is we captured about a million gallons with
4 pumper trucks and about a million and a half, a
5 million point six escaped.

6 Q. So even -- and how many pumper trucks did
7 you bring in?

8 A. That's a hard number to give you at any
9 given time, because we run pumper trucks 24/7 for
10 approximately four days. We had pumper trucks from
11 Jeff City, Lebanon, Camdenton, Eldon, all neighboring
12 communities, all the private haulers that we could
13 possibly get in, but there were people that were
14 coming and going due to other responsibilities or
15 sleep, a need for sleep or whatever.

16 Q. Did you bring in as many pumper trucks as
17 you could?

18 A. Yes. We called -- we actually had clerical
19 people on the phone calling neighboring towns and all
20 private haulers within probably a 100-mile radius.

21 Q. So even though you brought in every pumper
22 truck you could, how much did you still lose and you
23 weren't able to capture?

24 A. I believe the estimates that DNR helped us
25 with and our own personnel and with the treatment

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1 plant records was mean -- mean numbers that were used
2 would have been the average daily flow over a period
3 of time, and I believe those numbers we lost was 1.6
4 million.

5 Q. Was that a serious environmental problem?

6 A. It's always an environmental problem
7 whenever you have a spill.

8 Q. Are you trying -- are you here today to try
9 and prevent another such instance occurring within
10 the City of Osage Beach sewer system?

11 A. Certainly.

12 Q. Mr. King, is there anything else -- let me
13 ask, on MP-1, when the line runs down to the sewage
14 treatment plant, would your position be any different
15 if the proposed rock quarry were to the south on this
16 big green space that we're looking at but that's
17 still down the hill towards the sewage treatment
18 plant?

19 A. No.

20 Q. Would your concern be any different if it
21 was some other quarry operator other than Magruder
22 that wanted to open up a quarry immediately adjacent
23 to your sewage treatment lines?

24 A. No.

25 Q. So basically, if I'm understanding your

40 (Pages 154 to 157)

1 testimony, you're here to protect those lines, and it
2 doesn't matter which particular spot along those
3 lines or who's trying to do it?

4 A. That's correct.

5 MR. MAUER: Thank you. Nothing
6 further.

7 HEARING OFFICER: Mr. Duggan, do you
8 wish to cross-examine the witness?

9 MR. DUGGAN: I just have a couple of
10 questions for him.

11 HEARING OFFICER: Proceed.

12 EXAMINATION

13 QUESTIONS BY MR. DUGGAN:

14 Q. Do you have a plan for notifying the public
15 when there is a catastrophic break in the line that
16 causes you to start shutting down lift stations and
17 so forth?

18 A. Yes, sir.

19 Q. How does that work?

20 A. It depends on the area and the magnitude of
21 the break. In our emergency response plan, the first
22 thing that we would do is we would have personnel
23 call major resorts, big users that we knew maybe they
24 can stop doing their laundry, things that they could
25 do that wouldn't completely shut their business down,

1 any conservance of water one way or another. I guess
2 the last resort would be mandating it.

3 Q. And you do have the ability to mandate that?

4 A. We've never exercised that authority, so I'm
5 not sure how we would actually complete that with
6 that many... You can put out a broadcast or
7 something of that nature, but to physically make them
8 to not use water would be nearly impossible.

9 Q. Sure, but you have a way built into your
10 emergency response plan to get the word out to
11 customers; is that right?

12 A. That's correct.

13 Q. And the intent of that would be to reduce
14 the flow to the system as much as possible while the
15 system is being repaired; is that right?

16 A. That's correct. And we used that in this
17 '95 -- those options in this break in '95.

18 Q. Okay. Now, I took your deposition or
19 participated in your deposition some weeks ago, and I
20 recall asking you if you had an emergency contingency
21 plan specific to a break should it occur on the
22 Magruder property. Do you remember me asking you
23 that?

24 A. I'm sure you did.

25 Q. Do you remember what your answer was at the

1 time?

2 A. I don't, but we do not have an emergency
3 response plan in that particular area that would
4 eliminate a discharge in that area.

5 Q. Okay. How about with respect to responding
6 to, say, a compound break of the line in that area?
7 Do you have an emergency plan at this point for
8 purposes of getting to that where you can fix it?

9 A. We have a plan that we have personnel on
10 call 24/7, 365 days a year with a pager, cell phone
11 and the access to the service truck to respond to any
12 and all calls within the hour.

13 Q. Okay. Have you in your plan to respond to a
14 situation like that built in how much time you would
15 expect to need to make a repair to a break in the
16 line?

17 A. No. All line repairs are completely -- no
18 two are alike, actually.

19 Q. Sure. Okay. Now, you -- we heard testimony
20 this morning from Mr. Hutchcraft that if the plant
21 itself had to be shut down, it could tolerate that
22 condition for about eight hours before the system
23 would no longer be operative once it was started up
24 again. They'd have to bring in more liquor or more
25 bugs in order to revitalize the plant. In your

1 experience, would you agree with that assessment?

2 A. I have experience in operating treatment
3 plants similar to that for many years, and I believe
4 that each treatment plant is sensitive by region.
5 Even if they're identically built, they're not
6 operated the same. So I would not like to -- I don't
7 feel comfortable making a different assessment than
8 Mr. Hutchcraft does because he knows his particular
9 plant. Even if I ran the sister plant identical to
10 it 100 miles from here, they would not have the same
11 characteristics, so I don't have a -- I'm not
12 comfortable answering that question that he's already
13 answered.

14 Q. Well, have you worked with the operators of
15 that plant to come up with how much time you would be
16 allowed if you were, depending on the
17 circumstances -- I know it's hard to predict this,
18 but how much time you would expect to have to make
19 the repair before it started to have a very bad
20 effect on the plant operation itself?

21 A. I believe that when Mr. Hutchcraft referred
22 to shutting the plant down that's not referring to
23 shutting the flow down to the plant. That's shutting
24 the aeration off at the plant. Two different things,
25 sir.

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1 Q. Okay. So if a flow were shut off to the
2 plant because of a catastrophic break in the pipe
3 somewhere in that downhill slide, do you have an
4 opinion as to how that would affect the plant at some
5 point?

6 A. In my opinion, the plant would still be able
7 to function. That would not -- that would not kill
8 the bacterial growth that he's speaking about in the
9 plant. Because they still would be able to maintain
10 aeration at the plant. They just would not have
11 anything feeding the plant, new food. So it would --
12 I could go into more detail, if you like.

13 Q. So I'm gathering from your answer that if
14 there is a compound break in the line on that
15 downhill slide your emergency plan does not assume
16 right now any sort of time frame for getting that
17 repair done before it begins to adversely affect the
18 plant?

19 A. Correct.

20 Q. When you testified yesterday about needing
21 approximately 135 trucks and it could be up to 500, I
22 can't remember, you mentioned a certain number of
23 trucks.

24 A. Yes, sir.

25 Q. In coming up with that number of trucks that

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1 million gallons a day and would I -- how many trucks
2 would it take me to transport that 2 million gallons
3 a day, realizing that we have peak flow. And I used
4 the factor -- a peak factor of four, which is a very
5 reasonable peak factor.

6 Q. Okay. And how many days were built into
7 that calculation?

8 A. That would be per day.

9 Q. So you're talking about 135 trucks per day
10 at peak flow?

11 A. Assuming that they could haul one load per
12 hour for 24 hours.

13 Q. Okay. Now I'm getting at -- I was just
14 trying to figure out how you calculated that. So if
15 I'm hearing you correctly -- and just correct me if
16 I'm not catching it right -- you're talking about a
17 24-hour period, 2 million gallons within that 24-hour
18 period?

19 A. Yes.

20 Q. And the number of trucks that it would take
21 to deliver that 2 million gallons to the plant over
22 that 24-hour period, making multiple trips; is that
23 right?

24 A. No, sir.

25 Q. Where did I miss the number?

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1 would be needed to respond, were you taking into
2 account which lift stations would be addressed first
3 and how many trucks would be needed to get to those
4 different lift stations?

5 A. The number that I came to was if we shut
6 down the system, how many trucks would it take to
7 transport the sewage by pumper truck to the treatment
8 plant.

9 Q. Okay.

10 A. If we were unable to pump it through the
11 existing system.

12 Q. Okay. And what I'm trying to get a better
13 handle on is how much time elapsing we're talking
14 about. How long would you need those 135 trucks?
15 How many trips are they making and so forth? Do you
16 see what I'm trying to get at?

17 A. The line break that I had in '95, the repair
18 took close to four days, if that helps answer your
19 question.

20 Q. How does that fit into your calculation of
21 135 trucks? Were you assuming a four-day period?

22 A. The '95 break, if I remember, our flows were
23 probably about one-third of what they are today. I
24 simply took what a reasonable peak flow day would be,
25 a tourist season day, and I used the figure of 2

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1 A. During -- as an example, during -- let's say
2 we had a break and it took us 24 hours to fix it.

3 Q. Okay.

4 A. During that 24-hour period, we certainly are
5 going to have peaks of flow. And at the peak, using
6 a peak factor of four, during that peak time, I used
7 that number as how many trucks I would need on hand.

8 Q. Okay.

9 A. Because we can't -- we do not have a way to
10 make the flow even for a 24-hour period for a lesser
11 amount of trucks. Is that...

12 Q. I think I'm understanding. And you said
13 each truck, you assumed, would have how much of a
14 turnaround for delivery to the plant?

15 A. The calculation I used was one hour.

16 Q. One hour for each truck?

17 A. Yes, sir.

18 Q. Okay.

19 MR. DUGGAN: Give me just a second.

20 Q. (By Mr. Duggan) Looking back at the '95
21 incident and your personal experience with that
22 event, would you be able to say whether that incident
23 from start to finish affected any person's health?

24 A. Certainly mine.

25 Q. In what way?

42 (Pages 162 to 165)

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<p>1 A. I believe my personal notes show that I 2 slept about five hours during that period of time, 3 and I probably lost five years off my life in stress. 4 Q. Okay. The same question with respect to any 5 person's safety, including your own. 6 A. Certainly we lost an estimated 1.6 million 7 gallons of sewage on the ground. If that affected 8 anyone personally, I don't know, sir. 9 Q. And during that incident, from beginning to 10 finish, would you be able to say whether it affected 11 anybody's livelihood? 12 A. Yes. 13 Q. How so? 14 A. Well, it certainly affected the livelihood 15 of the private pump trucks, because they were busy 16 hauling. Economically it helped them. The down side 17 of that would have been we did ask some major lodging 18 chains, such as, I believe, Tan-Tar-A, which is a 19 very large customer of ours, I believe we asked them 20 to conserve water during that period of time, as we 21 did several other businesses. I seem to recall 22 businesses in the immediate area that were not 23 allowed to open at that time. 24 Certainly it affected the traffic 25 throughout the entire city, as we had pumper trucks</p>	<p>1 A. Please repeat. 2 MR. BROWNLEE: Would you read that 3 back to him, please. 4 (Whereupon, the requested portion of 5 the record was read by the reporter as follows.) 6 A. That's correct. 7 Q. (By Mr. Brownlee) And you have no design 8 experience in forced lines such as the ones going 9 through the Magruder property to the sewer plant? 10 A. That is correct. 11 Q. Regarding the map, can you -- you're closer 12 than I. What is the number on that exhibit, 13 Mr. King? 14 HEARING OFFICER: It's BP-22. 15 MR. BROWNLEE: It's 22? 16 HEARING OFFICER: Yes, sir. 17 Q. (By Mr. Brownlee) Now, I'd like to ask you 18 a couple of questions just about the -- and it's an 19 aerial photograph, is it not? 20 A. Yes, sir. 21 Q. Okay. Does the blackened area have any 22 significance to the permit hearing today? 23 A. No, sir. 24 Q. I mean, are those the limits of the Osage 25 Beach city limits or anything like that?</p>
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<p>1 staged along 54 at all the major lift stations. 2 There was no way to get enough pumper trucks at that 3 particular site because we had major lift stations 4 shut down, so we had pumper trucks running from them, 5 so that certainly closed down one lane of 54 during 6 that period of time. And to give you a good economic 7 impact on us, I do not have those figures, sir. 8 MR. DUGGAN: I don't have any other 9 questions. 10 HEARING OFFICER: Mr. Brownlee, 11 cross-examination? 12 EXAMINATION 13 QUESTIONS BY MR. BROWNLEE: 14 Q. Mr. King, my name is Richard Brownlee. I 15 represent Magruder. You and I have met before. Good 16 afternoon. You have no blasting experience, do you, 17 sir? 18 A. That is correct. 19 Q. And you're not certified as a blaster if you 20 have no blasting experience, correct? 21 A. That is correct. 22 Q. And you have no experience in the 23 construction of forced lines such as the ones going 24 through the Magruder property to the sewer plant, 25 correct?</p>	<p>1 A. I believe the red line is the city limits of 2 Osage Beach. 3 Q. Well, there's a lot of red lines in there. 4 I'm just trying to kind of figure out exactly where 5 Osage Beach is in relation to that darkened area on 6 the exhibit. 7 A. The red line is the city limits of Osage 8 Beach. 9 Q. I'm going to, if I can, step up a minute. 10 And it would appear that that red line actually 11 traces the water line and crosses north of the Grand 12 Glaize Bridge and heads up towards Lodge of the Four 13 Seasons. That's the red line you're talking about, 14 correct? 15 A. Yes, sir. 16 Q. And it comes all the way back over towards 17 the Magruder site, but then, of course, the Magruder 18 site is not in the City of Osage Beach property, 19 correct? 20 A. Correct. 21 Q. Okay. And the -- are the sewer lines marked 22 in any particular color on this map? 23 A. The sewer lines are in green. 24 Q. And are all the sewer lines -- obviously not 25 the residential or local lines, but these are -- how</p>

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<p>1 would you describe most of these green lines?</p> <p>2 A. Most of the green lines are -- they're</p> <p>3 forced-type mains.</p> <p>4 Q. Well, if they're not forced type, what would</p> <p>5 they be?</p> <p>6 A. They're forced mains, various sizes.</p> <p>7 Q. And that's the smaller of the green lines.</p> <p>8 Then the larger of the green lines are the mains</p> <p>9 we're talking about, the 18 or the 12 inches or the</p> <p>10 24's and stuff, correct?</p> <p>11 A. Yes. Some of the green lines that are on</p> <p>12 there are as little as 2-inch, probably.</p> <p>13 Q. And the roads and highways are marked on</p> <p>14 that map, are they not?</p> <p>15 A. Yes.</p> <p>16 Q. Now, regarding the 18-inch main, can you</p> <p>17 circle where that actually starts? I know you've</p> <p>18 pointed and -- is there a way we can do that without</p> <p>19 just marking the exhibit up, or maybe a highlight,</p> <p>20 see if that might work?</p> <p>21 A. Just where it turns to 18?</p> <p>22 Q. Yeah. That's probably a poor word to say</p> <p>23 starts, but, yeah, where it turns from the, I think,</p> <p>24 16 and 12?</p> <p>25 A. Sure. Obviously, it gets little down here,</p>	<p>1 A. Well, I -- you can either call it the south</p> <p>2 side or the east side.</p> <p>3 Q. It's not on the Highway 54 highway easement,</p> <p>4 is it, sir?</p> <p>5 A. No.</p> <p>6 Q. It's on a separate easement off of that --</p> <p>7 the highway easement?</p> <p>8 A. You're talking about where it starts?</p> <p>9 Q. The 24, yes. Yeah, where it starts.</p> <p>10 A. No. It's on City property.</p> <p>11 Q. Okay. And it, then -- is it the heavier</p> <p>12 green line that ultimately goes up to the Magruder</p> <p>13 property that would go from the mark you made, is it</p> <p>14 this line that goes up this way that's the 24-inch?</p> <p>15 A. Yes, sir.</p> <p>16 Q. Okay. And I guess as it gets closer to</p> <p>17 Highway D, which is, I assume it's -- Highway D comes</p> <p>18 in like this. Where is Prewitt Point? Can you mark</p> <p>19 that? We've talked about that. And can we maybe --</p> <p>20 why don't we make --</p> <p>21 A. Right there where it says Prewitt Point.</p> <p>22 Q. You said, "Right there where it says Prewitt</p> <p>23 Point." What is Prewitt Point?</p> <p>24 A. Prewitt Point is a shopping complex.</p> <p>25 Q. How many acres?</p>
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<p>1 and then as it goes...</p> <p>2 Q. Sure. If you'll just kind of mark that,</p> <p>3 make not too big a circle or a dot or something in</p> <p>4 pink.</p> <p>5 A. (Complies.)</p> <p>6 Q. Is that going to show?</p> <p>7 A. Yeah.</p> <p>8 Q. Okay. And why don't you draw an arrow over</p> <p>9 to the white from that and just put 18-inch. Yeah,</p> <p>10 just not a huge, but... Yeah, there you go. Now,</p> <p>11 the same question for the 24-inch. Where does it</p> <p>12 become a 24?</p> <p>13 A. (Indicating.)</p> <p>14 Q. And that's sort of due northeast of the</p> <p>15 Grand Glaize Bridge, correct?</p> <p>16 A. Right there.</p> <p>17 Q. And is that on Highway 54, that 24-inch</p> <p>18 main, at that point?</p> <p>19 A. Where it starts, sir?</p> <p>20 Q. Uh-huh.</p> <p>21 A. Just off of Highway 54 a couple of hundred</p> <p>22 yards.</p> <p>23 Q. Is it on the lake side or the land side of</p> <p>24 Highway 54? North or -- I'll say north or south, but</p> <p>25 the road doesn't run north or south there.</p>	<p>1 A. I do not know.</p> <p>2 Q. Approximately?</p> <p>3 MR. MAUER: Objection. Calls for</p> <p>4 speculation.</p> <p>5 A. I don't know.</p> <p>6 Q. (By Mr. Brownlee) What's located there in</p> <p>7 terms of buildings? I mean, is there, like, a</p> <p>8 Chicken Annie's or is there a Hy-Vee or a --</p> <p>9 A. There's a Hy-Vee.</p> <p>10 Q. Okay. What else?</p> <p>11 A. Lowe's, Target, Outback Steak House,</p> <p>12 Walgreen's, various smaller stores.</p> <p>13 Q. Were you employed by the City when that</p> <p>14 project was built?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know whether blasting occurred during</p> <p>17 the construction and leveling of that area?</p> <p>18 A. I do not know.</p> <p>19 Q. You don't know. Well, do you know what the</p> <p>20 underlying ground is in there? Is it gravel, rock,</p> <p>21 or was it soil brought in?</p> <p>22 A. Well, in the area... It's a very large</p> <p>23 area, so --</p> <p>24 Q. I understand. I tried to ask you how big it</p> <p>25 was. I'll just accept it's very large. Like, 10, 15</p>

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<p>1 acres?</p> <p>2 MR. MAUER: Same objection.</p> <p>3 HEARING OFFICER: Sustained.</p> <p>4 Q. (By Mr. Brownlee) In your view, how large</p> <p>5 is very large in terms of the land that has those</p> <p>6 buildings on it?</p> <p>7 A. Over 20 acres.</p> <p>8 Q. Okay. There we go. And do you know what --</p> <p>9 was there rock brought in to level that 20-acre area?</p> <p>10 A. I recall a very large ravine that was</p> <p>11 filled.</p> <p>12 Q. And do you know what it was filled with?</p> <p>13 A. I'm -- no, I don't.</p> <p>14 Q. You don't know if it was all dirt or rock</p> <p>15 and dirt or rock?</p> <p>16 A. I do not.</p> <p>17 Q. Do not know. Okay. And let's get right</p> <p>18 back to this Prewitt Point. I don't think you need</p> <p>19 to get up. As we're coming up the 24-inch main, as</p> <p>20 we get right sort of south of Prewitt Point, there's</p> <p>21 a white area marked at the 90-degree turn of that</p> <p>22 main. What's that, Mr. King, that I'm pointing to</p> <p>23 right here? I'll put a little X on it.</p> <p>24 A. I believe that's in the area of where the</p> <p>25 Home Depot is.</p>	<p>1 blast, it would have been immediately adjacent to</p> <p>2 that 24-inch line, correct?</p> <p>3 MR. MAUER: Objection. Calls for</p> <p>4 speculation.</p> <p>5 MR. BROWNLEE: I understand.</p> <p>6 Q. (By Mr. Brownlee) If they had to?</p> <p>7 HEARING OFFICER: Overruled.</p> <p>8 Hypothetical. If they had to blast, where would it</p> <p>9 be in relation to the 24-inch pipeline? The witness</p> <p>10 is well qualified to answer that question.</p> <p>11 A. If they would have blasted there after the</p> <p>12 24-inch line went in, yes, it would be close to that.</p> <p>13 Q. (By Mr. Brownlee) What's your position?</p> <p>14 You're the Public Works Superintendent.</p> <p>15 A. That's correct.</p> <p>16 Q. You don't know if blasting occurred there?</p> <p>17 A. No, sir.</p> <p>18 Q. Do you know when blasting occurs anywhere in</p> <p>19 the City of Osage Beach?</p> <p>20 A. No, sir.</p> <p>21 Q. You just have -- you just don't know about</p> <p>22 it? You never see it?</p> <p>23 A. We have a department that handles that.</p> <p>24 Q. So as you're in charge of the public works,</p> <p>25 the waters and the sewers, you don't know of blasting</p>
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<p>1 Q. Well, that's what it is now. Do you know</p> <p>2 whether that area is a blast site where they removed</p> <p>3 rock to put over to Prewitt Point?</p> <p>4 A. I don't know.</p> <p>5 Q. You don't know. Do you know the company</p> <p>6 Bloomsdale that worked on the Prewitt Point area?</p> <p>7 A. I've heard of them.</p> <p>8 Q. And what was -- who are they? Do you know?</p> <p>9 A. Just a big contractor, earth moving</p> <p>10 contractor.</p> <p>11 Q. So right now, you live there, you don't know</p> <p>12 if that is an open area where blasting has occurred?</p> <p>13 A. I don't know about blasting, sir.</p> <p>14 Q. Well, is it an open area with exposed rock?</p> <p>15 A. The Home Depot site?</p> <p>16 Q. No. Right what I just showed you. When was</p> <p>17 that photograph taken? I'll go back. Do you know?</p> <p>18 A. I'm not sure how old that photograph is.</p> <p>19 Q. So do you know if it's a Home Depot site, do</p> <p>20 you know whether -- is it level where the Home Depot</p> <p>21 site is?</p> <p>22 A. They have a very level, big parking lot.</p> <p>23 Q. And did they have to blast to get it level?</p> <p>24 A. I do not know.</p> <p>25 Q. You don't know, okay. Well, if they had to</p>	<p>1 specifically? You can't -- can you recall blasting</p> <p>2 ever occurring next to one of your water or sewer</p> <p>3 lines the entire time you've been employed there?</p> <p>4 MR. MAUER: I'm going to object.</p> <p>5 That's a compound question. There's about three</p> <p>6 different things laced in there.</p> <p>7 HEARING OFFICER: Break up your</p> <p>8 compound question, then, Mr. Brownlee.</p> <p>9 Q. (By Mr. Brownlee) In the entire time you've</p> <p>10 been working there, have you ever had blasting occur</p> <p>11 next to a water or sewer line?</p> <p>12 A. I don't recall a particular instance, but</p> <p>13 I'm sure that it has happened.</p> <p>14 Q. And let me ask you, does the 24-inch go</p> <p>15 underneath Highway D right before it goes down</p> <p>16 towards the Magruder property?</p> <p>17 A. Yes.</p> <p>18 Q. Are there any special conditions that were</p> <p>19 in the relocation of Highway D that were included to</p> <p>20 make sure that 24-inch line received any special</p> <p>21 conditions to go under the highway?</p> <p>22 A. Normally any line that goes underneath a</p> <p>23 roadway is cased in a big pipe, if you will, with a</p> <p>24 smaller line through it.</p> <p>25 Q. Do you know whether this one was?</p>

45 (Pages 174 to 177)

1 A. I do not.

2 Q. And regarding the smaller line, how many
3 times -- you can take a look. How many times has
4 that 18-inch line or those two main feeder lines, how
5 many times do they cross highways as illustrated on
6 that map?

7 A. I would not have an exact number, but I
8 would say several times. We have several encasements
9 through there that are steel encasements where that
10 line would be put in there to where it -- it's in a
11 sleeve, basically, protective sleeve.

12 Q. So obviously you know that there's measures
13 you can take to cross a pipeline just by taking
14 special conditions to make sure the crossing protects
15 the line, correct?

16 A. Sure.

17 Q. Let me ask you, just while we're up here on
18 this D Highway area, if we're south of D Highway
19 where the 24-inch line heads straight north, what's
20 the grade flow there? Does it flow from there north
21 towards the Osage River or does it flow back south
22 towards whatever is down here?

23 A. Using D road as the high point?

24 Q. Yeah, D road is the high point.

25 A. Most of D road is going to be the high

1 point.

2 Q. So as the -- as the 24-inch main comes
3 north, it's going, then, uphill towards the D
4 Highway, up grade?

5 A. Yes.

6 Q. Now tell me, what happens if a backhoe this
7 afternoon cuts the 24-inch main south of D Highway,
8 causing all of the flow we've talked about to go
9 south? What's the City do about that?

10 A. What does the City do about that?

11 Q. Yeah. What's your remediation plan? Well,
12 let me ask you, do you have a plan for that area, an
13 emergency remediation plan for that scenario I've
14 just pointed out to you?

15 A. We do not have an emergency response plan
16 for every foot of pipe.

17 Q. Well, you said you didn't have one for
18 Magruder, and I'm -- but I'm talking about an area
19 that's south of D Highway that the flow -- the
20 downgrade goes south. Do you have a remediation plan
21 for that area for a break?

22 A. Not specifically.

23 Q. And, what, would you use your pumpers, the
24 three pumpers and call in just like you've done
25 before? Is that what you'd do? Or do you know?

1 A. Yes. If it was broke in that area, we'd
2 still have the flow from the 18 going around the
3 other way, so we'd have approximately 50 percent of
4 our flow still going to the treatment plant.

5 Q. Okay. And if the pipe would break on
6 Magruder's property, do you know whether both would
7 have a permanent ground displacement break, or what
8 if one of them just broke and the other one? So
9 you're okay if just one breaks in terms of the
10 Magruder property?

11 A. I'm not okay if any pipe breaks.

12 Q. But would the system continue operating if
13 we just had one pipe break on the Magruder property?

14 A. Could the system continue operating was your
15 question, sir?

16 Q. Yes, sir.

17 A. Only partially.

18 Q. Well, but it could continue operating,
19 correct?

20 A. Partially.

21 Q. Well, in these two examples you gave where
22 you were down for four or five days, did you use an
23 alternative pipeline?

24 A. No.

25 Q. Well, then you mean to tell me, then, the

1 entire Osage Beach system was shut down for four or
2 five days when the 18-inch line broke?

3 A. Yes.

4 Q. Well, did all of the lift stations backflow
5 and fill up with sewage like you've described in this
6 doomsday scenario in that four days when the 18-inch
7 one was broken?

8 A. We had major overflows, that's correct.

9 Q. But you were -- the plant you continued to
10 operate, correct?

11 A. Define operate.

12 Q. The plant continued to operate while that
13 18-inch line was broken for four or five days, as you
14 testified to?

15 A. Yes. The treatment plant functioned.

16 Q. That's what I'm talking about, the treatment
17 plant.

18 A. Yes.

19 Q. It continued to operate?

20 A. Yes.

21 Q. And when that broke, the bulge, how deep was
22 that cut that was next -- apparently next to the
23 easement that allowed this bulge of the pipe to come
24 out?

25 A. How deep was the cut?

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<p>1 Q. Yes, sir.</p> <p>2 A. Approximately 20 foot.</p> <p>3 Q. Was it a ditch or, like, a wall?</p> <p>4 A. It was a wall.</p> <p>5 Q. And how close to that pipe was the</p> <p>6 excavation in terms of feet?</p> <p>7 A. Going off of my memory, I would say 2 to</p> <p>8 3 feet.</p> <p>9 Q. And did you see this line rupture, or did</p> <p>10 you come on the scene later?</p> <p>11 A. After it happened.</p> <p>12 Q. And how wide is the easement there where</p> <p>13 that break occurred?</p> <p>14 A. The forced main easement?</p> <p>15 Q. Yes.</p> <p>16 A. Would have been 10 foot.</p> <p>17 Q. So they were obviously digging in the</p> <p>18 easement if they were 2 to 3 feet away from the</p> <p>19 actual pipe?</p> <p>20 MR. MAUER: Objection. It seems</p> <p>21 facts are not in evidence that the pipe was not</p> <p>22 within 2 feet of the edge of the easement. He's</p> <p>23 assuming the pipe was in the center of the easement.</p> <p>24 HEARING OFFICER: Well, I understood</p> <p>25 this is my expert on this pipe. I would assume he</p>	<p>1 citation from DNR for this violation?</p> <p>2 A. I don't believe we did.</p> <p>3 Q. So we had here an open -- was that an open</p> <p>4 and obvious violation of the DNR laws?</p> <p>5 A. It was a -- would not have been a permitted</p> <p>6 discharge.</p> <p>7 Q. Well, if you spilled 150,000 gallons of raw</p> <p>8 sewage out, I assume that's a violation of some sort</p> <p>9 of DNR water law; is that not correct?</p> <p>10 MR. MAUER: Well, I'm going to</p> <p>11 object. The question says if you spilled. I think</p> <p>12 the testimony was the City did not cause this spill.</p> <p>13 So the question is not --</p> <p>14 HEARING OFFICER: All right.</p> <p>15 Rephrase the question.</p> <p>16 Q. (By Mr. Brownlee) If the line erupted and</p> <p>17 spilled 150,000 gallons, as you've testified, that's</p> <p>18 an obvious violation of DNR law, correct?</p> <p>19 A. Yes.</p> <p>20 Q. And you're saying you don't believe the City</p> <p>21 received a citation, correct?</p> <p>22 A. Correct.</p> <p>23 Q. Would the Mayor know if they received a</p> <p>24 citation?</p> <p>25 A. She would have to answer that.</p>
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<p>1 would know. If you know relative to the easement</p> <p>2 when this rupture occurred. The objection is</p> <p>3 overruled.</p> <p>4 A. Please re-ask the question.</p> <p>5 Q. (By Mr. Brownlee) Were they digging in the</p> <p>6 easement when the pipe erupted or bulged and blew</p> <p>7 out?</p> <p>8 A. I would not know exactly where the easement</p> <p>9 would be.</p> <p>10 Q. Well, if it was 10 --</p> <p>11 A. If the pipe was on 1 foot of the edge of the</p> <p>12 easement or the other side or in the middle, I</p> <p>13 wouldn't know that.</p> <p>14 Q. If they were digging, then, it was very</p> <p>15 close to the easement, correct?</p> <p>16 A. I would assume.</p> <p>17 Q. Within at least 5 feet?</p> <p>18 A. It depends on where the pipe was located in</p> <p>19 the easement. I did not service the easement or</p> <p>20 haven't still.</p> <p>21 Q. Did you receive a citation, the City, for</p> <p>22 that break?</p> <p>23 A. I don't recall. It was in '99. I know it</p> <p>24 was reported to the Department of Natural Resources.</p> <p>25 Q. So you don't know if the City received a</p>	<p>1 Q. And on the other one we talked about, the</p> <p>2 18-inch line where there was obviously shot rock</p> <p>3 placed right on top of the PVC pipe, is that --</p> <p>4 that's the facts you've related?</p> <p>5 A. That's the best of my knowledge, yes.</p> <p>6 Q. Do you think the specifications on the</p> <p>7 construction of that eight would have allowed shot</p> <p>8 rock to be placed directly on top of a PVC pipe</p> <p>9 without some other protective fill above that?</p> <p>10 A. No.</p> <p>11 Q. So it was obviously constructed wrong, at</p> <p>12 least not according to specifications that you would</p> <p>13 know about?</p> <p>14 MR. MAUER: I'm going to object to</p> <p>15 the question. It assumes the shot rock was placed on</p> <p>16 top of the pipe as constructed.</p> <p>17 MR. BROWNLEE: He's testified to it.</p> <p>18 MR. MAUER: No, he didn't.</p> <p>19 Q. (By Mr. Brownlee) Was this shot rock placed</p> <p>20 right on top of the PVC pipe?</p> <p>21 A. No.</p> <p>22 Q. So what was piled directly on top of the PVC</p> <p>23 pipe?</p> <p>24 A. There was gravel, a fill material.</p> <p>25 Q. How much?</p>

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<p>1 A. It varied from 2 to 3 feet.</p> <p>2 Q. And do you know who put the shot rock there?</p> <p>3 A. Only hearsay.</p> <p>4 Q. Well, I mean, was there construction going</p> <p>5 on, or what?</p> <p>6 A. It was prior to my time being there. It was</p> <p>7 in place when I came to work there, sir.</p> <p>8 Q. The shot rock was?</p> <p>9 A. (Nods.) Yes.</p> <p>10 Q. So all of this, the knowledge and</p> <p>11 everything, it's hearsay for you. You weren't there?</p> <p>12 A. I'm the one that dug it up.</p> <p>13 Q. Did you receive a violation -- a citation</p> <p>14 from DNR for that spill?</p> <p>15 A. I believe so.</p> <p>16 Q. For the 160 million gallons?</p> <p>17 A. No.</p> <p>18 Q. Didn't receive --</p> <p>19 A. 1.6 million.</p> <p>20 Q. I'm sorry. 1.6 million. You believe you</p> <p>21 did get a citation from that?</p> <p>22 A. I believe we did.</p> <p>23 Q. Do you know what the result of the citation</p> <p>24 was?</p> <p>25 A. We were commended for our efforts. No fine</p>	<p>1 violations, and I want to show that this is a pattern</p> <p>2 that DNR deals with all the time where they negotiate</p> <p>3 with potential violations and might necessarily not</p> <p>4 issue a notice of violation or assess a penalty.</p> <p>5 HEARING OFFICER: The objection is</p> <p>6 sustained. The Hearing Officer doesn't see the</p> <p>7 relevance for purposes of this hearing.</p> <p>8 MR. BROWNLEE: Okay.</p> <p>9 Q. (By Mr. Brownlee) Do you know the</p> <p>10 specifications of the construction on that latter</p> <p>11 break, the 18-inch break involving the shot rock?</p> <p>12 A. No.</p> <p>13 Q. If you had a shutdown -- I think the cascade</p> <p>14 effect that Mr. Mauer asked you about where you would</p> <p>15 have to fix 32 lift stations per day that might take</p> <p>16 you two to two and a half months to go to all of</p> <p>17 them, what kind of break would you contemplate that</p> <p>18 would cause that kind of reaction?</p> <p>19 A. Well, if both major trunk lines were severed</p> <p>20 and we had to stop the flow in that area completely</p> <p>21 to make necessary repairs, then we may not</p> <p>22 necessarily shut all 1,150 stations down, but we</p> <p>23 would certainly keep shutting stations down to</p> <p>24 minimize overflows in those areas.</p> <p>25 Q. So there is remediation methodology that you</p>
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<p>1 imposed.</p> <p>2 Q. So DNR obviously negotiated with the City in</p> <p>3 terms of how that violation was handled, correct?</p> <p>4 A. They were involved with us. We called them</p> <p>5 immediately.</p> <p>6 Q. And is that a procedure -- have you ever</p> <p>7 else been involved with DNR when they investigated a</p> <p>8 complaint or a break under your jurisdiction?</p> <p>9 A. Yes.</p> <p>10 Q. Have you ever received a violation, the</p> <p>11 City, for any complaint or problem where DNR came</p> <p>12 down?</p> <p>13 A. Yes.</p> <p>14 Q. You've received what, notice of violations?</p> <p>15 MR. MAUER: Your Honor, I'm going to</p> <p>16 object at this point on relevancy. I thought the</p> <p>17 testimony this morning was that it was not relevant,</p> <p>18 and Mr. Brownlee said it was not relevant and he</p> <p>19 wasn't going to go there, so I'm going to object on</p> <p>20 relevancy.</p> <p>21 HEARING OFFICER: Mr. Brownlee, I</p> <p>22 would hear you on how this is relevant.</p> <p>23 MR. BROWNLEE: The relevance is</p> <p>24 there's been an issue made that DNR has given</p> <p>25 Magruder breaks or not adequately enforced</p>	<p>1 that runs this system can take where if there's a</p> <p>2 break in these two lines you just don't have to</p> <p>3 completely shut down the sewer system for the City of</p> <p>4 Osage Beach, correct?</p> <p>5 A. Have to shut down the flow to make that</p> <p>6 repair.</p> <p>7 Q. And the repair could take two hours or</p> <p>8 four days, I assume, depending on the type of damage.</p> <p>9 Isn't that a fair statement?</p> <p>10 A. That's a fair statement.</p> <p>11 Q. And an earthquake could cause damage just</p> <p>12 the same as a backhoe, correct?</p> <p>13 A. An earthquake could cause damage.</p> <p>14 Q. Do you know, on the Highway 54 project, will</p> <p>15 the City or the contractor be relocating the water</p> <p>16 and sewer lines?</p> <p>17 A. Well, are you talking about the new bypass?</p> <p>18 Q. Yeah.</p> <p>19 A. It would be a general contractor, and they</p> <p>20 may have subs that would relocate water and sewer, or</p> <p>21 they may themselves.</p> <p>22 Q. Okay. Well, I wasn't talking about exactly</p> <p>23 who did the work. On the Highway 54 relocation</p> <p>24 project, you as the Public Works Director are aware</p> <p>25 that there will have to be water lines and sewer</p>

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<p>1 lines moved. Is that not a fair statement?</p> <p>2 A. Correct.</p> <p>3 Q. And do you have any idea whether any of that</p> <p>4 will require blasting?</p> <p>5 A. I do not.</p> <p>6 MR. BROWNLEE: That's all I have.</p> <p>7 Thank you.</p> <p>8 HEARING OFFICER: Redirect?</p> <p>9 MR. MAUER: A couple of things.</p> <p>10 EXAMINATION</p> <p>11 QUESTIONS BY MR. MAUER:</p> <p>12 Q. Mr. King, I want to clear up some confusion.</p> <p>13 If the lines on the Magruder property are broken such</p> <p>14 that you had to call in pumper trucks and pump sewage</p> <p>15 into the trucks, where would you pump the sewage</p> <p>16 from? Is it the lift stations?</p> <p>17 A. The lift stations and probably the site of</p> <p>18 the break.</p> <p>19 Q. Okay. Now, once you get it on the truck,</p> <p>20 where are you going to take it?</p> <p>21 A. To the treatment plant would be the first</p> <p>22 place to go.</p> <p>23 Q. All right. So the treatment plant is going</p> <p>24 to stay in operation, because that's where you're</p> <p>25 going to take the sewage?</p>	<p>1 flow, daily flows, I'm not saying it's impossible,</p> <p>2 but I don't know how it would ever complete such a</p> <p>3 task with trucks, trucking that amount of fluid to</p> <p>4 another neighboring town.</p> <p>5 Q. You were asked about impact on livelihood</p> <p>6 for the 1995 break, the four-day break. Do you</p> <p>7 remember that, from Mr. Duggan?</p> <p>8 A. Yes.</p> <p>9 Q. All right. Now, did the City have to incur</p> <p>10 costs to repair that break?</p> <p>11 A. Yes.</p> <p>12 Q. Do you have a memory of how much the City</p> <p>13 had to spend?</p> <p>14 MR. BROWNLEE: Your Honor, I'm going</p> <p>15 to object. The City's not even a party to this</p> <p>16 proceeding. I mean, what the City may have incurred</p> <p>17 is no different than what the Boone County may have</p> <p>18 incurred. The City is not a party to this</p> <p>19 proceeding, so any costs that they have are totally</p> <p>20 irrelevant in terms of the damage requirements under</p> <p>21 the Missouri statute. It says Petitioners' health,</p> <p>22 safety and welfare. That's the standard.</p> <p>23 HEARING OFFICER: Mr. Mauer, response</p> <p>24 to the objection?</p> <p>25 MR. MAUER: Your Honor, this is</p>
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<p>1 A. Correct.</p> <p>2 Q. Okay. So under a line break scenario,</p> <p>3 you're not contemplating that the sewage treatment</p> <p>4 plant would have to shut down?</p> <p>5 A. That's correct.</p> <p>6 Q. All right. Now let's reverse it. If the</p> <p>7 sewage treatment plant is damaged and it has to shut</p> <p>8 down like Mr. Hutchcraft told us this morning, where</p> <p>9 would you take the sewage then?</p> <p>10 A. Well, we would have to find a neighboring</p> <p>11 town or towns that were capable of handling our</p> <p>12 additional capacity.</p> <p>13 Q. Have you done any thought -- have you given</p> <p>14 any thought to what town or towns you would try to</p> <p>15 utilize to ship the sewage while the sewage treatment</p> <p>16 plant is being repaired?</p> <p>17 A. No.</p> <p>18 Q. Do you know if there is an immediately</p> <p>19 adjacent community that has capacity that could</p> <p>20 accept all the sewage from Osage Beach?</p> <p>21 A. There is not in our community. We could</p> <p>22 haul -- it's physically impossible to haul that</p> <p>23 amount of sewage to a particular town.</p> <p>24 Q. Why do you say that?</p> <p>25 A. Well, if we're going to haul our entire</p>	<p>1 rebuttal. He was asked about an impact on</p> <p>2 livelihood. He provided information, and I'm</p> <p>3 entitled -- I think I'm entitled to simply ask --</p> <p>4 HEARING OFFICER: It's redirect. I</p> <p>5 don't see there's any fact that was raised in the</p> <p>6 cross-examination that this is rebutting. The City's</p> <p>7 not a party. The City's not a petitioner. I'm not</p> <p>8 sure what the definition of the livelihood of the</p> <p>9 City is. I'm not sure that livelihood simply</p> <p>10 encompasses that the City has to pay out more money</p> <p>11 versus the revenue of the money coming into the City.</p> <p>12 I don't think that livelihood generally in its common</p> <p>13 ordinary everyday usage applies to revenues for</p> <p>14 governmental entities. The objection is sustained.</p> <p>15 Q. (By Mr. Mauer) We heard this morning about</p> <p>16 a 12-inch pipe that runs into the sewage treatment</p> <p>17 plant from the City of Lake Ozark. Do you remember</p> <p>18 that?</p> <p>19 A. Yes.</p> <p>20 Q. All right. Now, just so we're sure, is</p> <p>21 there any interconnection between Osage Beach and</p> <p>22 Lake Ozark such that if the two lines running across</p> <p>23 the Magruder property are damaged that somehow you</p> <p>24 could divert the flow over to Lake Ozark into that</p> <p>25 12-inch line?</p>

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1 A. No, there is not.
 2 Q. So that 12-inch line doesn't do anything to
 3 help the flow coming out of the City of Osage Beach?
 4 A. Correct.
 5 Q. All right. And just -- I wasn't quite sure
 6 of the nature of that testimony, but is there any way
 7 that the -- if the plant was shut down that flow from
 8 the Osage Beach 18-inch and 24-inch could somehow be
 9 diverted into the 12-inch line for some sort of
 10 storage or capacity?
 11 A. No.
 12 Q. So that 12-inch line, is that 12-inch line
 13 of any assistance to holding sewage or somehow
 14 diverting sewage in the event of damage to the two
 15 lines, either one of the two lines, on the Magruder
 16 property?
 17 A. No.
 18 Q. You were asked about special protections for
 19 the pipes when they cross underneath a roadway. Do
 20 you remember that?
 21 A. Yes.
 22 Q. You talked about steel encasements and other
 23 things, like a sleeve?
 24 A. Yes.
 25 Q. To your knowledge, is there any such steel

1 encasements on the -- surrounding the pipes on the
 2 Magruder property?
 3 A. No.
 4 Q. Yesterday we heard about a potential for
 5 building a berm across the wet weather stream that is
 6 immediately adjacent to the City sewer lines. Do you
 7 remember that?
 8 MR. BROWNLEE: I'm going to object.
 9 This is not an issue that's been raised in the direct
 10 testimony of this witness.
 11 HEARING OFFICER: Correct. Objection
 12 sustained.
 13 MR. MAUER: Okay. Nothing further.
 14 HEARING OFFICER: Mr. Duggan, do you
 15 have any recross on the redirect?
 16 MR. DUGGAN: No.
 17 HEARING OFFICER: And only on those
 18 points.
 19 MR. DUGGAN: No, I do not.
 20 HEARING OFFICER: Thank you, sir.
 21 Mr. Brownlee, do you have any recross?
 22 MR. BROWNLEE: No.
 23 HEARING OFFICER: Only on the points
 24 in redirect.
 25 MR. BROWNLEE: No.

1 EXAMINATION
 2 QUESTIONS BY HEARING OFFICER:
 3 Q. Before the witness is excused, Mr. King,
 4 does your office have a survey? I'm not talking
 5 about a description of the survey. Does your office
 6 have a survey of the easement as it crosses the
 7 Magruder land?
 8 A. No, sir.
 9 Q. Do you know if one exists?
 10 A. Our Engineering Department would have that
 11 information if it exists, sir.
 12 Q. Thank you. You were not employed by the
 13 City when the 18-inch pipe was installed, correct?
 14 A. That's correct.
 15 Q. You were when the 24-inch line was
 16 installed, correct?
 17 A. That's correct.
 18 Q. Within the course of your responsibilities,
 19 are you familiar with what I'm going to call the
 20 ditch that was dug to lay that pipe?
 21 A. I was not on site during any of the
 22 construction, sir.
 23 Q. You were not. Thank you. This system has
 24 no ability where essentially the 18 and 24-inch lines
 25 start their descent that we talked about past D, D

1 road, that last pump station, I guess, this system
 2 has no ability for the raw sewage from the 18-inch to
 3 be transferred to the 24 or vice versa?
 4 A. There is no valving in place or cross lines
 5 making it able to do that.
 6 Q. Now, I want to understand because during
 7 your direct testimony at one point, or maybe it was
 8 cross-examination, I understood you to say that if
 9 one of these lines on the Magruder property breaks
 10 that you're going to have to shut down the entirety
 11 of that system. I don't understand.
 12 A. The question as I understood it, if the
 13 pipes were severed and broke.
 14 Q. All right. So if the -- let's assume this
 15 hypothetical: The 18-inch pipe ruptures on the
 16 Magruder property. Then all of the system served by
 17 the 24-inch pipe would not be affected? I mean, the
 18 24-inch pipe would still be able to carry its raw
 19 sewage?
 20 A. Yes.
 21 Q. And vice versa? If the 24-inch pipe breaks,
 22 the 18-inch is still going to service those portions
 23 of the system that lead to the 18-inch?
 24 A. Yes.
 25 HEARING OFFICER: Do you wish to

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<p>1 examine on the points that I just addressed?</p> <p>2 MR. DUGGAN: No.</p> <p>3 MR. BROWNLEE: No.</p> <p>4 HEARING OFFICER: Mr. Mauer?</p> <p>5 MR. MAUER: No, sir.</p> <p>6 HEARING OFFICER: With that, I thank</p> <p>7 you for your testimony, and you are excused.</p> <p>8 MR. MAUER: Mr. Edelman will be next,</p> <p>9 but I just need a quick five-minute break.</p> <p>10 HEARING OFFICER: All Right. I think</p> <p>11 it would be good to take a break. Let's try to be</p> <p>12 back by 25 after. Everybody can get a drink and use</p> <p>13 the facilities. With that, we're off the record.</p> <p>14 (Brief recess.)</p> <p>15 HEARING OFFICER: The hearing will</p> <p>16 come to order. Mr. Mauer, you may call your next</p> <p>17 witness.</p> <p>18 MR. MAUER: Thank you. Your Honor,</p> <p>19 we call Mr. Nicholas Edelman.</p> <p>20 HEARING OFFICER: Mr. Edelman, will</p> <p>21 you come forward to be sworn.</p> <p>22 NICHOLAS EDELMAN,</p> <p>23 of lawful age, produced, sworn, and examined on</p> <p>24 behalf of the Joint Sewer Board, deposes and says:</p> <p>25 HEARING OFFICER: Have a seat.</p>	<p>1 A. You have to attend an accredited school,</p> <p>2 which will take you approximately four to five years.</p> <p>3 Upon graduation, you either have to take a test</p> <p>4 during your -- during school or after school which is</p> <p>5 called the Fundamentals of Engineering Exam. You</p> <p>6 must pass that exam, and then you must have a</p> <p>7 four-year internship under a licensed professional</p> <p>8 engineer. Once you've got the four years of</p> <p>9 experience, then you can now apply to the Board of</p> <p>10 Professional Engineers, Architects and Land Service</p> <p>11 to take the exam. You have to have -- for my</p> <p>12 professional license, I had to have my supervisor</p> <p>13 explain what I did over the past four years. I had</p> <p>14 to have three licensed professional engineers giving</p> <p>15 me a reference to say that I'm qualified to take the</p> <p>16 exam, and I had to have two personal references that</p> <p>17 I was qualified to take the exam.</p> <p>18 Q. All right.</p> <p>19 A. And then I take the exam, and I passed.</p> <p>20 Q. Okay. Prior to becoming the City Engineer</p> <p>21 for Osage Beach, what was your position?</p> <p>22 A. I was Civil Engineer I at the City of Osage</p> <p>23 Beach since May 28th, 2002.</p> <p>24 Q. And when did you graduate from school?</p> <p>25 A. May... I believe the date was May the 20th</p>
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<p>1 EXAMINATION</p> <p>2 QUESTIONS BY MR. MAUER:</p> <p>3 Q. Please state your full name for the court</p> <p>4 reporter.</p> <p>5 A. Nicholas Lee Edelman.</p> <p>6 Q. What's your current position, sir?</p> <p>7 A. City Engineer of Osage Beach.</p> <p>8 Q. How long have you held that position?</p> <p>9 A. Since February 1st of 2007.</p> <p>10 Q. All right. Would you briefly describe for</p> <p>11 the Hearing Officer your educational background,</p> <p>12 starting with when and where you graduated from</p> <p>13 college and what degrees?</p> <p>14 A. I graduated from the University of Missouri</p> <p>15 Rolla with a Bachelor of Science in civil</p> <p>16 engineering.</p> <p>17 Q. Do you have any particular areas of special</p> <p>18 training or certification?</p> <p>19 A. I'm a professional engineer in the state of</p> <p>20 Missouri.</p> <p>21 Q. Is that a license that you've actually</p> <p>22 obtained?</p> <p>23 A. Yes.</p> <p>24 Q. Can you describe for the Hearing Officer</p> <p>25 what you had to do in order to obtain that license?</p>	<p>1 of 2002.</p> <p>2 Q. All right. So you went straight --</p> <p>3 A. May of 2002.</p> <p>4 Q. So you went straight from school to the</p> <p>5 employ of the City of Osage Beach?</p> <p>6 A. Yes.</p> <p>7 Q. And what department is the engineer -- does</p> <p>8 the City Engineer work in?</p> <p>9 A. In the Engineering Department.</p> <p>10 Q. How many employees are in the Engineering</p> <p>11 Department?</p> <p>12 A. Currently there is myself, there are two</p> <p>13 E -- there is one EI candidate, there is one civil</p> <p>14 engineer graduate, there is one construction</p> <p>15 inspector, there's one half time construction</p> <p>16 building inspector and there's the department</p> <p>17 secretary.</p> <p>18 Q. All right. For the City of Osage Beach as</p> <p>19 the City Engineer, are you familiar with the</p> <p>20 infrastructure belonging to the City of Osage Beach,</p> <p>21 including its sewer lines?</p> <p>22 A. Yes.</p> <p>23 Q. I want to ask you about the sewer lines and</p> <p>24 the easements as they exist on the Magruder property.</p> <p>25 You know what we're talking about?</p>

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<p>1 A. Yes.</p> <p>2 Q. All right. The sewer lines that are there,</p> <p>3 there is an 18-inch line; is that correct?</p> <p>4 A. Yes.</p> <p>5 Q. It was constructed in the early 1980's. I'm</p> <p>6 assuming you were not with the City at that time?</p> <p>7 A. No. I was... (Indicating.)</p> <p>8 Q. Do you have any personal knowledge of how</p> <p>9 that line was constructed?</p> <p>10 A. No.</p> <p>11 Q. Have you reviewed the construction documents</p> <p>12 that are available from the City of Osage Beach about</p> <p>13 the construction of that line?</p> <p>14 A. Yes.</p> <p>15 Q. From looking at those lines, can you</p> <p>16 identify what particular type of bedding material or</p> <p>17 other types of things are in place surrounding that</p> <p>18 18-inch line?</p> <p>19 A. No.</p> <p>20 Q. It just can't be done?</p> <p>21 A. In construction specifications, you have</p> <p>22 latitudes in terms of what types of bedding material</p> <p>23 you are allowed to place.</p> <p>24 Q. So from the drawings and the information</p> <p>25 available at City Hall, we just don't know?</p>	<p>1 supervising the inspection of that line?</p> <p>2 A. No.</p> <p>3 Q. Did you actually supervise or see the</p> <p>4 installation of that line when it was being placed</p> <p>5 across the Magruder property?</p> <p>6 A. No.</p> <p>7 Q. Do you have any personal information about</p> <p>8 how that line was placed, the fill material or</p> <p>9 anything else?</p> <p>10 A. Personal?</p> <p>11 Q. Yes, sir.</p> <p>12 A. No.</p> <p>13 Q. All right. Are you aware of a concrete</p> <p>14 encasement on a portion of that line?</p> <p>15 A. Yes.</p> <p>16 Q. Do you know why that concrete encasement was</p> <p>17 dug?</p> <p>18 A. Yes.</p> <p>19 Q. Why is that?</p> <p>20 A. Stream crossing, Corps of Engineers permit.</p> <p>21 It's either Section 12 or Section 13 on the Corps of</p> <p>22 Engineers permit that required it. I'm not positive</p> <p>23 on the section.</p> <p>24 Q. All right. Let's go back just so we're</p> <p>25 clear. The 24-inch line crosses -- is it underneath</p>
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<p>1 A. Correct.</p> <p>2 Q. All right. From looking at the drawings,</p> <p>3 can you identify the actual constructed cover that</p> <p>4 exists on those lines, how deep it is in the ground?</p> <p>5 Did I ask a bad question?</p> <p>6 A. To -- drawings are shown with a nominal</p> <p>7 depth of coverage so -- they --</p> <p>8 Q. I'm sorry?</p> <p>9 A. They are not shown with an exact depth of</p> <p>10 coverage.</p> <p>11 Q. So as you sit here today, even with</p> <p>12 reviewing all of the drawings and information</p> <p>13 available, is there any way for you as a licensed</p> <p>14 professional engineer to be able to say how much</p> <p>15 cover is existing over that 18-inch line as we sit</p> <p>16 here today?</p> <p>17 A. I would give you a nominal depth of cover</p> <p>18 because I do not know the exact depth.</p> <p>19 Q. And is there any way to know that from the</p> <p>20 information that's available?</p> <p>21 A. No.</p> <p>22 Q. The 24-inch line, you were employed with the</p> <p>23 City when that line was constructed; is that right?</p> <p>24 A. Part of it, yes.</p> <p>25 Q. Did you have any responsibility for actually</p>	<p>1 a streambed?</p> <p>2 A. Yes.</p> <p>3 Q. And in order to go -- take the 24-inch line</p> <p>4 underneath the streambed, what had to happen?</p> <p>5 A. You have to concrete encase the line.</p> <p>6 Q. And who requires that?</p> <p>7 A. The Corps of Engineers.</p> <p>8 Q. Was that concrete encasement from anything</p> <p>9 you've reviewed in any way connected to create a path</p> <p>10 so that trucks could cross over top of the line at</p> <p>11 that point?</p> <p>12 A. No.</p> <p>13 Q. Are you familiar enough with the DNR</p> <p>14 requirements -- with the Army Corps of Engineers or</p> <p>15 DNR requirements to know if you could even drive</p> <p>16 trucks across a stream bed like that?</p> <p>17 A. That's not something that I know.</p> <p>18 Q. Okay. There was a question of Mr. King</p> <p>19 about crossovers between the 18-inch and the 24-inch</p> <p>20 line. Do you remember that testimony?</p> <p>21 A. Yes.</p> <p>22 Q. All right. Now, if the 18-inch or 24-inch</p> <p>23 line severed, okay, based on your understanding of</p> <p>24 the situation and your knowledge of the lines, is</p> <p>25 there anything that would stop the flow as it runs to</p>

1 the river? Is there any existing impediments to the
2 flow?

3 A. Through the Magruder property?

4 Q. Yes.

5 A. It would head straight towards the river.

6 Q. All right. There's been some suggestion of
7 constructing a berm across the wet weather stream
8 that is immediately adjacent to the sewer lines. Are
9 you familiar with that stream?

10 A. Yes.

11 Q. Are you aware of the permits that would be
12 required before any berm or dam could be constructed
13 across that stream?

14 A. Yes.

15 Q. And what would those be?

16 A. The City of Osage Beach had to relocate a
17 stream through the City park to build ball fields,
18 and they had to obtain a 404 permit. That's an Army
19 Corps of Engineers permit. It took us three years.

20 Q. Three years to get the permit?

21 A. Yes.

22 Q. Are you aware of other permits that may be
23 required in order to build a berm designed to contain
24 sewage?

25 A. Not to my knowledge.

1 Q. Are you aware of the type of basin that
2 would be necessary and liner in order to make it
3 adequate to contain sewage and prevent it from
4 seeping into the ground?

5 MR. BROWNLEE: I'm going to object to
6 the question as speculative and asking him to assume
7 facts that aren't even in evidence, whether a liner
8 would be required. I just don't think there's a
9 proper foundation or whether this witness is
10 qualified to even answer that question.

11 HEARING OFFICER: Mr. Mauer, if
12 you'll lay some foundation.

13 Q. (By Mr. Mauer) Are you familiar with what
14 type of liner, if any, might be necessary in order to
15 prevent raw sewage from seeping into the ground?

16 A. As a licensed professional engineer, when
17 you're designing aerated lagoons, those types of
18 treatment systems, you have to look at various liners
19 and such, either the use of bentonite clay, those
20 types of issues that would be necessary to keep raw
21 sewage from going into the ground water system.

22 Q. Okay.

23 A. Okay? You can use some type of plastic
24 medium, some type of bentonite. It's going to be a
25 layered system as a professional engineer would

1 design.

2 Q. So an engineer would have to be engaged to
3 design more than just a dam across the street?

4 A. Yes.

5 Q. If you're going to create a basin to catch
6 raw sewage?

7 A. Yes.

8 Q. Are you aware of any sort of early warning
9 system that would trigger some sort of gate so that
10 if raw sewage is exposed the gate would close and the
11 berm would -- and the basin would contain it but if
12 it's just water running down the stream the water
13 would continue to flow right past it and into the
14 river? Are you aware of any such thing?

15 A. Not to my knowledge.

16 Q. Have you ever heard of such technology
17 existing?

18 A. I would think you would have to design
19 something on a density basis, looking at the density
20 of raw sewage versus water. I've never seen anything
21 in practice. I think it would be very interesting,
22 though.

23 Q. There's been some questioning about blasting
24 in and around Prewitt's Point. Did you hear that
25 testimony?

1 A. Yes.

2 Q. Or the questioning anyway? Are you aware if
3 the City allows blasting within the city limits?

4 A. Yes.

5 Q. Do we give out permits? Does the City of
6 Osage Beach give permits for that?

7 A. Yes.

8 Q. What type of process is utilized before a
9 permit is issued?

10 A. Essentially the first step is the blasting
11 permit application comes to the City of Osage Beach.
12 The building official makes sure that all the
13 documents that are required in terms of you have a
14 site plan showing where the blasting is going to take
15 place and the application itself are submitted.
16 Okay? The other thing is you have to provide certain
17 insurance-type documents. The City attorney then
18 reviews it. There is a City ordinance in regards to
19 the City attorney has the ability to look at the
20 situation and raise the amount of insurance
21 requirements for the blasting if he sees that the
22 City's infrastructure, some of those type things,
23 could be damaged that would require a larger
24 insurance than \$1 million, but the general policy is
25 \$1 million.

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<p>1 Q. Does the -- to your knowledge, has the City 2 ever given a permit that would allow for repeated 3 blasting near or adjacent to one of its lines like 4 would be for a rock quarry operation? 5 A. No. 6 Q. One other thing. There was some testimony 7 yesterday about a meeting that -- or conversations 8 that may have occurred with Dean McDonald. Do you 9 recall attending a meeting with Mr. McDonald at City 10 Hall? 11 A. Yes. 12 Q. Can you tell Mr. Tichenor what you remember 13 about that? 14 A. Mr. McDonald and I had talked multiple times 15 prior to the meeting, but we then set up a meeting. 16 Included in that meeting was Mr. McDonald, 17 Mr. Magruder, the City Administrator Nancy Viselli, 18 the Mayor Penny Lyons and myself. At that meeting it 19 was talked about where the sewer line is located, 20 what measures that Magruder could take to try to 21 prevent any damages to the sewer lines and those 22 types of nature. It was also talked about what kind 23 of excavation. One of the thought processes was that 24 they were wanting to level off the site in basically 25 two plains, and Mr. Magruder didn't realize at the</p>	<p>1 would look at doing those measures; if the hearing 2 process proceeded, that they would not be as easy to 3 deal with. 4 Q. And did they -- was there a specific 5 set-back from the City's sewer lines that was 6 discussed? 7 A. They had talked about 50 feet, on my memory. 8 Q. So if I understood it right, what you were 9 told was 50 feet set-back and a potential berm 10 running adjacent to the sewage -- to the sewer lines? 11 A. To the sewer easement, yes. 12 Q. So it would be running longitudinal, not 13 directly across the wet weather stream? 14 A. No. It would be running this direction. 15 Q. I see. And just so we're clear, do you 16 remember who attended that meeting on behalf of 17 Magruder Limestone? 18 A. Dean McDonald and Mr. Magruder. 19 Q. Would that be Mark Magruder? 20 A. The gentleman... 21 Q. The gentleman who's here? 22 A. Yeah. 23 Q. You don't know his first name? 24 A. Sorry. 25 MR. MAGRUDER: Not a problem.</p>
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<p>1 time that the sewer line comes up through the 2 property and had actually looked at leveling off the 3 property. 4 Q. Can you explain to Mr. Tichenor what you 5 mean by leveling off the property? 6 A. Mr. Magruder, they talked about possibly 7 putting some type of berm along the sewer line, and 8 then the other thing that was brought up during the 9 meeting is possibly cutting into this material here 10 to basically make this plain here a level plain, but 11 at that time I don't think Mr. Magruder realized that 12 the sewer line -- what the depth of cover is and some 13 of those issues. 14 Q. As a result of that meeting, were there any 15 assurances given to the City that the lines would not 16 be damaged or impacted? 17 A. No. We were just talking about ideas 18 that -- possibly that Magruder could be doing to 19 prevent damage. 20 Q. And do you recall the result of that 21 meeting? Did Magruder Limestone agree to do 22 anything? 23 A. The only thing of my memory in regards to 24 that was -- is that if Magruder and the City of Osage 25 Beach could come to some type of agreement, then they</p>	<p>1 A. I do good to remember my own name some days. 2 MR. MAUER: Nothing further. Oh, 3 wait a minute. One more. 4 Q. (By Mr. Mauer) Just a pre-emptive question 5 from the Hearing Officer. Do you have a survey of 6 the easement or a description of the easements in a 7 meets and bounds fashion? 8 A. Yes. 9 Q. And would that be something that you could 10 make available to the Hearing Officer, if requested? 11 A. Yes. 12 MR. MAUER: Okay. Thank you. 13 HEARING OFFICER: For purposes of the 14 record, the Joint Board is ordered to produce the 15 survey of the easement over the Magruder property 16 from the Osage Beach Engineering Department records. 17 Mr. Duggan, questions of this witness? 18 MR. DUGGAN: No questions. 19 HEARING OFFICER: Mr. Brownlee? 20 MR. BROWNLEE: Just a couple. 21 EXAMINATION 22 QUESTIONS BY MR. BROWNLEE: 23 Q. Regarding the concrete encasement that you 24 testified, I believe you said it's a Corps of 25 Engineers requirement that was put in because the</p>

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<p>1 24-inch line crossed a stream?</p> <p>2 A. Yes.</p> <p>3 Q. What stream does it cross, Mr. Edelman?</p> <p>4 A. Sometimes if you have a dry creek, something</p> <p>5 of that nature, the majority of the population</p> <p>6 wouldn't consider that a stream. It's essentially</p> <p>7 right in this area right here.</p> <p>8 Q. It's like a gaining stream or a losing</p> <p>9 stream?</p> <p>10 A. No. It's essentially just a low spot. At</p> <p>11 the time that we had the site visit, once you go</p> <p>12 roughly through -- start walking from the treatment</p> <p>13 plant and you start walking downhill and when you get</p> <p>14 to the bottom of that area and start back up the</p> <p>15 area, that's essentially what I'm talking about.</p> <p>16 Q. Well, are you aware that there are at least</p> <p>17 200 feet of encasement that's actually on the</p> <p>18 Magruder property that's not anywhere near the sewer</p> <p>19 plant?</p> <p>20 A. This essentially would extend right --</p> <p>21 rather in a large distance, and then anytime you have</p> <p>22 essentially a drainage ditch, something of that</p> <p>23 nature, coming through, you would have an encasement</p> <p>24 also.</p> <p>25 Q. Well, if this sewer line is -- encasement is</p>	<p>1 what the size of this one on the Magruder property</p> <p>2 is?</p> <p>3 A. No.</p> <p>4 Q. Who was the contractor on that job that put</p> <p>5 that encasement in?</p> <p>6 A. The sub or the general?</p> <p>7 Q. The general.</p> <p>8 A. Journigen Construction.</p> <p>9 Q. Out of Springfield, Missouri?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Now, you stated, I believe, regarding this</p> <p>12 berm that was raised by Mr. Mauer that it took the</p> <p>13 City three years of dealing with the Corps of</p> <p>14 Engineers to relocate a stream?</p> <p>15 A. Yes.</p> <p>16 Q. I can believe that, I've dealt with them,</p> <p>17 but we're not relo -- this berm they're talking</p> <p>18 about, do you have any idea as you sit there today</p> <p>19 what berm they're even talking about?</p> <p>20 A. No.</p> <p>21 Q. So do you know whether as part of this berm</p> <p>22 any stream is going to be relocated?</p> <p>23 A. The only thing that I have heard is that the</p> <p>24 possibility was they were going to berm in the low</p> <p>25 point to capture the sewage. That's all I've heard.</p>
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<p>1 150 feet, as one map indicates, or 200 feet as a</p> <p>2 daily construction drawing says and looking at the</p> <p>3 scale of this, if it starts down there at the sewer</p> <p>4 plant, you're talking about over 1,000 feet of</p> <p>5 concrete?</p> <p>6 A. That is one of them that I was mentioning in</p> <p>7 particular. In terms of in this area, if there is an</p> <p>8 area that you have a drainage ditch, something of</p> <p>9 that nature, going through of significant size, you</p> <p>10 would have a concrete encasement also.</p> <p>11 Q. Is that a Corps of Engineers requirement?</p> <p>12 A. Normally when you're taking a sewer line</p> <p>13 through a drainage ditch your concern is, of course,</p> <p>14 the drainage washing the material off, damaging the</p> <p>15 sewer pipe, exposing it, some of those types of</p> <p>16 issues, and actually causing a break in that nature.</p> <p>17 Q. So is this your testimony, then, that the</p> <p>18 sewer line where it's encased on the Magruder</p> <p>19 property is there due to erosion reasons as opposed</p> <p>20 to crossing the stream?</p> <p>21 A. Stream crossing, something of that nature.</p> <p>22 Q. And do you know the size of this?</p> <p>23 A. Generally our encasements --</p> <p>24 Q. No. No. No. I didn't ask you generally</p> <p>25 what your encasements were. I asked you, do you know</p>	<p>1 I didn't actually hear the testimony of yesterday.</p> <p>2 Q. Okay. Thank you. Talking -- where did that</p> <p>3 other map take off to? Just a minute here. You were</p> <p>4 in the hearing room when we talked with the previous</p> <p>5 witness about this Prewitt Point issue up here?</p> <p>6 A. Yes.</p> <p>7 Q. Do you see the little X that I'm talking</p> <p>8 about?</p> <p>9 A. That's not Prewitt Point property, sir.</p> <p>10 Q. But I'm talking about the X.</p> <p>11 A. I know, sir.</p> <p>12 Q. Do you know what this building is right here</p> <p>13 on the left of that X?</p> <p>14 A. That's the Home Depot building.</p> <p>15 Q. That's the Home Depot, isn't it?</p> <p>16 A. Yes.</p> <p>17 Q. So your City Public Works Director didn't</p> <p>18 even know where the Home Depot was, correct?</p> <p>19 MR. MAUER: Well, I'm going to object</p> <p>20 to the clarification here. I mean, he's looking at</p> <p>21 an aerial.</p> <p>22 HEARING OFFICER: Mr. Mauer, wait.</p> <p>23 State another question, Mr. Brownlee.</p> <p>24 Q. (By Mr. Brownlee) If that's the Home Depot,</p> <p>25 the square, at that corner that appears to be a light</p>

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<p>1 spot where I put a blue X, what was that?</p> <p>2 A. That was excavation.</p> <p>3 Q. How was it handled?</p> <p>4 A. That particular excavation?</p> <p>5 Q. Yeah.</p> <p>6 A. I don't know.</p> <p>7 Q. Was it blasted?</p> <p>8 A. I -- that particular excavation, I don't</p> <p>9 know, sir.</p> <p>10 Q. You don't know whether a permit was granted</p> <p>11 to blast there?</p> <p>12 A. If blasting would have occurred, then there</p> <p>13 would have been a permit for it, sir.</p> <p>14 Q. And you know you can have blasting for --</p> <p>15 under Missouri law where you're not necessarily doing</p> <p>16 a quarry, correct?</p> <p>17 A. Blasting occurs in the City of Osage Beach</p> <p>18 where there is no quarry, sir.</p> <p>19 Q. Well, I'm talking about state law. You can</p> <p>20 have blasting for things like development, can you</p> <p>21 not?</p> <p>22 A. Yes, sir.</p> <p>23 Q. And you can have blasting for land</p> <p>24 improvement, can you not?</p> <p>25 A. In terms of the --</p>	<p>1 Q. For that particular purpose.</p> <p>2 A. There has been some blasting in regards to</p> <p>3 relocation of the water and sewer lines.</p> <p>4 Q. And do you know where it is in terms of at</p> <p>5 this point? I mean, if we could identify that map,</p> <p>6 could you show us where there's been blasting?</p> <p>7 A. In regards to relocation of our water and</p> <p>8 sewer lines? Yes.</p> <p>9 Q. Just approximately?</p> <p>10 A. Yes.</p> <p>11 Q. Why don't you just, if you could,</p> <p>12 Mr. Edelman, I don't know how we mark -- maybe you</p> <p>13 could just draw a little -- some zeros along the</p> <p>14 highway.</p> <p>15 A. There's one.</p> <p>16 Q. Okay. Why don't you mark it, if you could.</p> <p>17 A. It's essentially in this area right in here.</p> <p>18 Q. And that's right where the 24-inch line is?</p> <p>19 A. Yes, sir.</p> <p>20 Q. How close was the blasting to the 24-inch</p> <p>21 line at that point?</p> <p>22 A. It was for a water line crossing, and I'm</p> <p>23 not exactly sure how close in terms of proximity. I</p> <p>24 mean, feet-wise, 100, maybe, something of that</p> <p>25 nature.</p>
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<p>1 Q. State law.</p> <p>2 A. I would consider the relevant land</p> <p>3 improvement, sir.</p> <p>4 Q. Now, when you had a meeting with</p> <p>5 Mr. McDonald with you and the Mayor and I think the</p> <p>6 City Administrator, Mr. McDonald knew that the sewer</p> <p>7 line was going through the property, didn't he?</p> <p>8 A. I had talked to Mr. McDonald multiple times</p> <p>9 in the past, yes, sir.</p> <p>10 Q. And he was aware of that when you all had</p> <p>11 the meeting with the Mayor?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. Finally, you're familiar with the</p> <p>14 Highway 54 relocation project, correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And as part of that project, will you have</p> <p>17 any responsibilities in terms of water or sewer</p> <p>18 relocations that might be necessitated by that</p> <p>19 improvement?</p> <p>20 A. That is one of my job responsibilities, sir.</p> <p>21 Q. And are there going to be relocations of</p> <p>22 water and sewer lines due to that project?</p> <p>23 A. Yes, sir. There's been multiple already.</p> <p>24 Q. And has any blasting been required?</p> <p>25 A. Has any blasting been required?</p>	<p>1 Q. 100 feet from the 24-inch line --</p> <p>2 A. Possibly.</p> <p>3 Q. -- you've been blasting. Who handled that</p> <p>4 blasting?</p> <p>5 A. Our contractor.</p> <p>6 Q. And who's that?</p> <p>7 A. King, Coffman -- King, Coffman & Sons</p> <p>8 Excavating.</p> <p>9 Q. And regarding the rest of that project, will</p> <p>10 there be other relocations of water and sewer lines</p> <p>11 that will require blasting?</p> <p>12 A. Out of the water and sewer lines that we've</p> <p>13 already constructed, that's the only one that there's</p> <p>14 been any blasting on, sir.</p> <p>15 Q. I said would there be more.</p> <p>16 A. Sir, I don't know what the material on the</p> <p>17 ground is.</p> <p>18 Q. Will there be any blasting for the road</p> <p>19 itself on the Highway 54 project?</p> <p>20 A. For the expressway project?</p> <p>21 Q. Yes, sir.</p> <p>22 A. Yes, sir.</p> <p>23 Q. And where will that occur?</p> <p>24 A. Wherever the State decides they want to</p> <p>25 blast, sir. That's not my -- I don't think the City</p>

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<p>1 of Osage Beach can limit the State to what they're 2 going to do. 3 Q. But you know there's areas there's rock 4 they're going to have to blast? 5 A. Yes, sir. 6 Q. And are there water and sewer lines around 7 those areas? 8 A. The 24-inch sewer line was installed -- a 9 good portion of it was installed right alongside the 10 expressway. 11 Q. The upcoming expressway? 12 A. Yes, sir. 13 Q. So they'll be blasting for the upcoming 14 expressway along a lot of the 24-inch water or sewer 15 line, correct? 16 A. Yes, sir. 17 MR. BROWNEE: Thank you. I have 18 nothing further. 19 HEARING OFFICER: Redirect, 20 Mr. Mauer? 21 EXAMINATION 22 QUESTIONS BY MR. MAUER: 23 Q. Mr. Edelman, with this potential blasting 24 along the 24-inch line for the expressway, first of 25 all, can the City stop MODOT from blasting along that</p>	<p>1 the flow at that point; is that right? 2 A. At the Magruder property? 3 Q. Yes. 4 A. It's going straight to the river, sir, if 5 there is a blast -- if there is damage. 6 Q. So if either one of the lines is damaged, 7 what happens? 8 A. In the Magruder property or in the -- 9 Q. In the Magruder property. 10 A. If one of those lines is damaged and it 11 breaks, the sewage is going into the Osage River. 12 MR. MAUER: Okay. Thank you. 13 Nothing further. 14 HEARING OFFICER: Recross on the 15 points covered in the redirect? 16 EXAMINATION 17 QUESTIONS BY MR. BROWNEE: 18 Q. By redundancy, what do you mean? 19 A. This lift station, which the City of Osage 20 Beach calls the Sands lift station -- 21 Q. And that's where the 24-inch starts? 22 A. Essentially is where the 24-inch starts. 23 Okay? It is bound and connected to the 18-inch 24 forced main. Okay? So essentially what you'd have 25 to do -- and this is what Mr. King would have to do</p>
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<p>1 line? 2 A. I would think not. 3 Q. Okay. Secondly are there protections and 4 redundancies along the portions where the blasting 5 will occur? 6 A. Yes, there is. 7 Q. And do those redundancies protect the 8 potential for overflow that don't exist along the 9 Magruder property? 10 A. Yes, sir, there is. 11 Q. So does the blasting that may occur along 12 the 24 Highway Expressway project present anywhere 13 close to the same danger as the blasting that is 14 being proposed for the Magruder property? 15 A. Does it present the same type of danger? 16 Q. Because of the redundancies that exist. 17 A. In this section, the expressway goes 18 essentially from here up through here by Home Depot. 19 In this area, you have a redundancy of that this 20 existing 18-inch forced main, you are able, okay, to 21 send sewage in this 18-inch forced main and close 22 this off. Okay? Here at the Magruder property, sir, 23 the two lines go through one easement. There is no 24 redundancy. 25 Q. So you wouldn't have the ability to divert</p>	<p>1 is you shut this valve off on the 24-inch line that 2 if there was a damage, a leak, okay, you shut that 3 line off. Then you take Sands pump station and force 4 Sands pump station to pump back up to what the City 5 of Osage Beach calls the Rockway station. Okay? 6 It's right near the gas station by Wal-Mart. Okay? 7 The problem you have there is that station, this 8 system was not designed for that. Okay? So 9 essentially what you're going to have to do is 10 basically take the flow -- you're going to have to 11 have a man here, you're going to have to have a man 12 here so you don't flood the station, but there is a 13 redundancy there. 14 Q. By redundancy, you mean a separate pipe? 15 A. Yes. 16 Q. I thought Mr. King testified these two pipes 17 were not connected. 18 MR. MAUER: Objection. He said they 19 were connected up on the Magruder property. 20 HEARING OFFICER: Yeah. 21 Mischaracterizes the answer to my question. They 22 were not connected up on the Magruder property, and 23 there wasn't a question further on that. Proceed. 24 Q. (By Mr. Brownee) But in terms of the 25 blasting along the 24-inch pipe, there will be</p>

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1 blasting along there, and right now you just don't
2 know where because they don't necessarily know
3 what's -- where it would be because of the rock; is
4 that correct?

5 A. Correct.

6 Q. What's the distance, if you can give us --
7 and you can look at the scale -- from where that
8 24-inch line starts up to past Office Depot?
9 What's -- is that a mile in there or?

10 A. Sorry, sir. Where's the scale?

11 Q. Well, I don't know. Maybe you just know
12 from driving along the highway there.

13 A. From where to where?

14 Q. Well, from where the 24-inch starts up to
15 let's say Home Depot where I think the highway is
16 going to go next to that, isn't it?

17 A. Pure guess. Mile, mile and a half,
18 two miles.

19 Q. So they could be blasting for a mile or a
20 mile and a half along the 24-inch pipeline?

21 A. In similar locations?

22 Q. Uh-huh.

23 A. No, because they're filling in those
24 locations.

25 Q. But there will be the potential either to

1 fill or blast along over a mile of that pipeline?

2 A. That's a possibility, sir.

3 MR. BROWNLEE: Thank you.

4 MR. MAUER: Nothing further.

5 HEARING OFFICER: Nothing further?

6 Before you're dismissed, Mr. Edelman --

7 MR. BROWNLEE: Can I get one other
8 thing, just one question?

9 HEARING OFFICER: Proceed.

10 Q. (By Mr. Brownlee) On this easement on the
11 pipeline that the judge has asked you about, is there
12 a locator line on that, on that pipeline?

13 A. On the pipeline?

14 Q. Uh-huh.

15 A. Which one, sir?

16 Q. Well, the 24 or the PVC.

17 A. The 24-inch will have a locator wire on it.
18 The PVC line does not.

19 Q. And what's the locator line enable you to
20 do?

21 MR. MAUER: I'm not trying to be, but
22 this is well beyond any scope of my recross -- or my
23 redirect, and I think you enforced that before.

24 HEARING OFFICER: I did; however, the
25 Hearing Officer wants to hear.

1 A. That locator wire that's along the 24-inch
2 line, contractors install it in various means.
3 Sometimes they'll just lay it in the ditch with the
4 pipe and it could be on the edge of the ditch.
5 Sometimes they wrap it around the pipe. Sometimes
6 they tape it to the pipe. Okay? So essentially --
7 and one of the things that when you're locating a
8 line, you essentially have a 2-foot variance each
9 side of your locate to be off. Okay? SBC, AT&T,
10 anybody that does locate is allowed that. Okay? So
11 if that line is damaged within that 4 feet, the
12 utility company is essentially not held responsible
13 for it if that locate was there. If it was -- the
14 locate was off by more than that, then that's
15 something that's different.

16 EXAMINATION

17 QUESTIONS BY HEARING OFFICER:

18 Q. All right. Before I dismiss you,
19 understanding your testimony relative to you
20 really -- you have no knowledge as far as the 18-inch
21 line, the bedding material, the cover, and my
22 understanding is your testimony was it's covered to a
23 nominal depth; is that correct?

24 A. Correct.

25 Q. So if all we have on the 18-inch line are

1 the Kirkwood & Associates drawing and that drawing
2 shows that it was revised on two different occasions,
3 in '86 and in '88, two construction records, and that
4 shows a top of pipe is 42 inches below grade, on what
5 basis can you say that that pipe is not 42 inches
6 below grade?

7 A. During a construction project,
8 municipalities do not hire a licensed land surveyor
9 to survey the line as they are installing it. So
10 essentially what happens, if the terrain of the
11 ground is rolling, the problem is with 24, 18-inch
12 pipe, you cannot get it to roll with the ground.
13 Okay? So essentially what happens is you put it to a
14 nominal depth of cover. Okay. There may be 43
15 inches, there may be 44, there may be 40, there may
16 be 39. Essentially it depends on what the lay of the
17 ground is compared to that straight line distance of
18 that pipe. Pipe --

19 Q. So, Mr. Edelman, let me interrupt you. Your
20 statement relative to this nominal depth of cover had
21 nothing to do with any actual investigation of this
22 line; it's just your general knowledge and
23 understanding?

24 A. Yes.

25 Q. All right. Turning to the 24-inch line, the

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<p>1 drawings for this indicate the pipe is shown at a 2 cover depth of 84 inches; however, a minimum of 36 3 cover will be acceptable. So as I read that, this is 4 covered at least to a depth of 36 inches; it may be 5 covered to a depth of 84? 6 A. It is not covered to a depth of 84, the 7 initial drawing. 8 Q. And let me ask you, how can you make that 9 statement? 10 A. The initial drawings for the 84-inch depth 11 of cover used concrete thrust blocks. Okay? That 12 pipe -- essentially what you're doing with a concrete 13 thrust block is when you have a change in direction 14 on pipe, you're worried about that change in that 15 direction, there's a force that gets put on that 16 fitting. 17 Q. Let me interrupt. There are concrete thrust 18 blocks on the Magruder property? 19 A. No. 20 Q. All right. Then I don't want to hear about 21 concrete. 22 A. But that's why the 84 inches of cover was 23 set. Because the original design had it at 84 inches 24 of cover. 25 Q. Then, Mr. Edelman, what is your basis that</p>	<p>1 testimony, Mr. Edelman. Anybody want to question on 2 the points I covered? 3 MR. MAUER: No, your Honor. 4 HEARING OFFICER: Do we need to take 5 a break, or can we move to the next witness? 6 MR. MAUER: If we could just take 7 five minutes, because the last witness won't take 8 long. 9 HEARING OFFICER: All right. Let's 10 break until a quarter after. 11 (Brief recess.) 12 HEARING OFFICER: The hearing will 13 come to order. Mr. Mauer, you may call your next 14 witness. 15 MR. MAUER: Yes. One housekeeping 16 matter. I'm not sure that we actually offered -- we 17 did get BP-22? Okay. Great. Then yes, we call 18 Mayor Penny Lyons. 19 HEARING OFFICER: Mayor Lyons, please 20 come forward. And just while the Mayor is coming 21 forward, we will at the conclusion of the entire 22 process, not just today, the entire process, we will 23 go back. I have kept my notes as far as what 24 witnesses have testified or identified the individual 25 exhibits as, and we will take up at the last day that</p>
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<p>1 the Commission should not rely upon the drawings set 2 by the contractor which says it's 84 inches, however 3 36 is acceptable, which to me says it's 36 inches to 4 84 inches below? 5 A. It's 36 inches of cover. In the submittal, 6 they supplied a joint restraint on the pipe at 7 fittings instead of -- in lieu of concrete thrust 8 blocks. The contractor used joint restraints instead 9 of concrete thrust blocks. That is why they are 10 allowed to go 36 inches below. The submittals will 11 show that. 12 Q. So I really still don't have anything that 13 tells me that part of that pipe -- that all of it's 14 at least 3 feet below grade, 24-inch, right? It's 15 all at least 3 feet below grade? 16 A. The nominal depth is -- the average depth is 17 3 feet of coverage, the nominal depth. Okay? If 18 that terrain says -- like I said, sir, that pipe 19 doesn't roll with the terrain, so essentially that's 20 the nominal depth. 21 HEARING OFFICER: I guess when I laid 22 pipe for tile lines in the field I just did a better 23 job than this company did, then. If Daddy wanted the 24 pipe 3 feet in the ground, the pipe was going to be 25 3 feet in the ground. All right. I appreciate your</p>	<p>1 we meet, we'll go through that so that we're sure 2 that we've got introduced what has been identified, 3 what's been offered. And so I appreciate you all 4 keeping your own list so that we can address that, 5 but I think we're current -- I know we're current on 6 everything as to this point. 7 PENNY LYONS, 8 of lawful age, produced, sworn, and examined on 9 behalf of the Joint Sewer Board, deposes and says: 10 MR. DUGGAN: Have a seat, please. 11 EXAMINATION 12 QUESTIONS BY MR. MAUER: 13 Q. Good afternoon, ma'am. 14 A. Good afternoon. 15 Q. Please give us your full name for the court 16 reporter. 17 A. Penny Alice Lyons. 18 Q. And where do you reside, Mayor Lyons? 19 A. Osage Beach. 20 Q. How long have you lived there? 21 A. Since '71. 22 Q. Are you employed other than as the Mayor? 23 A. I'm self-employed. 24 Q. And what do you do? 25 A. I have some rentals.</p>

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1 Q. Okay. Can you describe for the Hearing
2 Officer very briefly what your duties entail as the
3 Mayor of Osage Beach?

4 A. As Mayor, I preside over the twice monthly
5 meetings and some other meetings that we have. I sit
6 on planning and zoning. I have general direction
7 over the City. We have a City Administrator, and I
8 deal with her daily and she reports to me things that
9 need to be done. I sign numerous documents every
10 time we have a bid. I also serve on several
11 citizens' committees and I serve on the Joint Sewer
12 Board as virtue of the office. Every other year the
13 chairman from Lake Ozark or Osage Beach, the mayors
14 trade and become chairman of that committee. I serve
15 on LOTAC, Lake Ozark Transportation Advisory
16 Commission. That's part of the RPC from Camden
17 County. And I serve anywhere from 20 to 30 hours a
18 week just taking care of general business for the
19 City.

20 Q. Okay. When did you become Mayor of Osage
21 Beach?

22 A. I was elected in 2000.

23 Q. And prior to that, did you have any other
24 position for the City?

25 A. I was elected twice as Alderman for Ward 1.

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1 Q. And what was the -- what were your terms of
2 office as an Alderman?

3 A. Aldermen are two years, but in my second
4 year I ran for Mayor, so I served as Alderman for
5 three years.

6 Q. So you've been an elected official for the
7 City of Osage Beach for almost 11 years?

8 A. Yes.

9 Q. And when was the last time you were elected
10 Mayor?

11 A. April 8th of this year I was elected for my
12 fifth term.

13 Q. And the Mayor's term is how long?

14 A. Two years.

15 Q. So your term will now continue all the way
16 through 2010?

17 A. Yes, sir.

18 Q. We heard some testimony already, and I know
19 you've sat through it. I don't want to be completely
20 redundant, but I'd like you to describe for the
21 Hearing Officer the size of Osage Beach, the
22 population and so we get a little bit more of a
23 flavor for exactly what type of community we're
24 talking about.

25 A. The last census, which I'm sure is

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1 completely out of date, eight years ago we had about
2 4,000 citizens. We have more now. And on the
3 weekends we may have as many as 100,000 people on
4 many weekends. We're not as seasonal as we used to
5 be, we're more year-round. We have a lot of retail,
6 people that come to shop for retail that come for the
7 day and shop and live in the surrounding community.
8 We have a lot of what we call absentee landowners
9 that have homes there that come down for long
10 weekends. We have two school systems. We have two
11 counties. We have the expressway coming in, which is
12 about a \$99 million project for Osage Beach. And, of
13 course, you've heard about our sewer system which is
14 unique in the United States, according to people that
15 have looked at it and understood it. And then we
16 have just almost completed our water system. We
17 started it eight years ago, and we've put in a
18 15-year water system in less than eight years. We
19 have one road to finish up on.

20 Q. And this water system, just so we're clear,
21 are you talking about drinking water?

22 A. Drinking water. Drinking, potable and fire
23 suppression. We didn't have either almost nine years
24 ago.

25 Q. How many citizens does the sewer system

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1 serve?

2 A. Well, it serves all the people in Osage
3 Beach except for this one road that we're finishing
4 up, which there may be 15 people down there. It also
5 serves outside the city all the way to Tan-Tar-A, the
6 resort, and Tan-Tar-A Estates on the other side of
7 the resort. So we serve outside of the city limits
8 also.

9 Q. Do you have an estimate of how many people
10 besides -- not just permanent residents but how many
11 people utilize your sewer system?

12 A. No, because condos and apartments and
13 complexes fill up and change, so I wouldn't be able
14 to give you an exact number.

15 Q. Do you have an estimate on how many?

16 A. You mean each person or each unit or...

17 Q. I'm just looking for a number of people, be
18 it by homes, condos, that are served by our sewer
19 system. I'm just trying to give the Hearing Officer
20 an idea of the number of people that depend upon that
21 sewer system.

22 A. Well, like I say, on a three-day weekend we
23 may have 100,000 people that may reside in town,
24 including Tan-Tar-A which effects our system.

25 Q. So on a given weekend, the people depending

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<p>1 upon the sewer system could approach 100,000?</p> <p>2 A. That's -- I've been told that's the</p> <p>3 estimate, yes.</p> <p>4 Q. You mentioned the Highway 54 bypass. Can</p> <p>5 you tell the Hearing Officer about what efforts</p> <p>6 you've taken as Mayor in connection with that Highway</p> <p>7 54 bypass?</p> <p>8 A. Well, first of all, I don't let anybody call</p> <p>9 it a bypass. It's called an expressway because it</p> <p>10 goes through the City and intertwines in the City and</p> <p>11 has six interchanges in there, and we just finalized</p> <p>12 the last interchange. I've met with property owners</p> <p>13 and Mr. Schwartz of MODOT, and we're facilitating the</p> <p>14 interchange at the hospital which wasn't going to</p> <p>15 happen. And we also got the interchange at</p> <p>16 Broadmortal and Case back online. They were going to</p> <p>17 remove a couple of the on and off ramps for financial</p> <p>18 restrictions. In the last six weeks we've negotiated</p> <p>19 with the property owners almost \$1 million worth of</p> <p>20 private property that will be given up for the</p> <p>21 expressway interchange at Nichols and the hospital to</p> <p>22 facilitate that facility, which is our largest</p> <p>23 employer, and I've worked with negotiating on that.</p> <p>24 I've worked with MODOT. I've come with the RPC and</p> <p>25 the LOTAC group. I've been representative of the</p>	<p>1 sales tax, so I've encouraged businesses to locate in</p> <p>2 the City because the sales tax provides a way that we</p> <p>3 can provide resources for the citizens and take care</p> <p>4 of business.</p> <p>5 Q. Is the availability of the sewer system</p> <p>6 important to the growth and future development of</p> <p>7 Osage Beach?</p> <p>8 A. It's vital.</p> <p>9 Q. Could you explain that to Mr. Tichenor,</p> <p>10 please?</p> <p>11 A. As an Alderman, I was put on the Joint Sewer</p> <p>12 Board. Wasn't the best place to be put as an</p> <p>13 Alderman, but I learned a lot. I might have been a</p> <p>14 little, I don't know, off the beaten track so much,</p> <p>15 but I learned about the sewage system down there. I</p> <p>16 learned about it as an Alderman at the City level.</p> <p>17 And our sewer system is such that the</p> <p>18 founding fathers put in a capital improvement tax</p> <p>19 that helps pay the sewer system, because it's an</p> <p>20 expensive sewer system, and so we subsidized the</p> <p>21 system. We have lift stations and pump stations, as</p> <p>22 you've heard, all these things. We've had to get</p> <p>23 some State revolving loans, and in order to qualify</p> <p>24 for those, we've had to have some long discussions,</p> <p>25 not necessarily with myself but other people in the</p>
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<p>1 lake area. I've also helped facilitate the access on</p> <p>2 Highway 5. That's been a priority of mine since I</p> <p>3 was an Alderperson, because Highway 5 really needed</p> <p>4 the expansion even more than Osage Beach did. And</p> <p>5 our time has come now and we're ready for the</p> <p>6 expressway.</p> <p>7 Q. How many years have you worked with MODOT or</p> <p>8 others in support of the Highway 54 Expressway?</p> <p>9 A. At least eight or nine years.</p> <p>10 Q. There's been some suggestion, Mayor, that</p> <p>11 you may be anti-development or anti-growth. Is there</p> <p>12 anything that you can recall you've ever done to be</p> <p>13 anti-growth or anti-development?</p> <p>14 A. I don't recall anything. What has happened</p> <p>15 is with the inclusion of water and Prewitt's Point</p> <p>16 coming in, the City has had one year two years ago</p> <p>17 \$60 million worth of building permits. Last year</p> <p>18 was, I think, \$55 million worth of building permits.</p> <p>19 This year alone the first three months we've got</p> <p>20 \$7 million worth of building permits. And when</p> <p>21 Hammons comes online, we will outpace anything we've</p> <p>22 done in the past. And prior to that we've had less</p> <p>23 than 18 or \$19 million a year. In fact, I've been</p> <p>24 challenged for being too progressive, but the fact</p> <p>25 goes that we do not have a property tax, we rely on</p>	<p>1 Departments to qualify for the State revolving loans</p> <p>2 because we are different and unique the way the</p> <p>3 system is set up and we don't necessarily meet some</p> <p>4 of their requirements. And so we have qualified for</p> <p>5 all these State revolving loans and have been able to</p> <p>6 reduce some of the cost for the sewer system. It is</p> <p>7 an expensive sewer system.</p> <p>8 Every year we replace pumps and grinder</p> <p>9 stations. We have a whole department in the City</p> <p>10 that does nothing but take care of our sewer system.</p> <p>11 We do some outside maintenance on the bigger pumps,</p> <p>12 but in-house the public works takes care of some of</p> <p>13 the smaller pumps. We have guys on-call all the</p> <p>14 time. We have a SCADA system. It's S-C-A-D-A. I'm</p> <p>15 not sure of the exact words, but what it does is</p> <p>16 transmits from one lift station to the public works</p> <p>17 in case there's an outage or something is down, kind</p> <p>18 of a warning system. We're noted for people to come</p> <p>19 and look at the treatment plant and the sewer system,</p> <p>20 the way it works and functions. So it's an extremely</p> <p>21 vital part of the City.</p> <p>22 Q. You've talked about your time on the Joint</p> <p>23 Sewer Board. Can you briefly explain to the Hearing</p> <p>24 Commissioner how the Joint Sewer Board came to be and</p> <p>25 how it operates?</p>

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1 A. I don't know all the history. We have a
2 gentleman that sits on there who was there when the
3 Joint Sewer Board was formed, Mr. Hamner. From
4 talking with him, they formed a Joint Sewer Board,
5 and as Mr. Gagnon said earlier today, there was a
6 concern about the lift stations and -- not having
7 lift stations but just concerns about the sewer. And
8 my understanding is the DNR asked that the joint
9 sewer be located below the dam and discharge into the
10 river. They thought that was the best way to do it.
11 Lake Ozark and Osage Beach jointly owned the plant.
12 They jointly run the plant and then they pay per flow
13 monthly for the cost in operating the plant. We meet
14 once a month, and they've been meeting once a month
15 since 1984 or '85.

16 Q. You talked about paid based upon flow. How
17 much of the flow is from Osage Beach?

18 A. Depending on the weather and sometimes when
19 I accuse Lake Ozark of having a party, we have 85 to
20 90 percent of the flow. We are usually around 90 and
21 they have 10, sometimes they have 15 percent of the
22 flow, and we pay accordingly.

23 Q. So approximately 85 to 90 percent of the
24 cost of the sewage treatment plant is paid by the
25 City of Osage Beach?

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1 A. Yes.

2 Q. How much does the Joint Sewer Board
3 calculate that the plant has cost for the
4 construction and operation?

5 A. We were in the process of working on a
6 feasibility study for expansion, so we wanted to know
7 some of the rough costs, and with that discussion I
8 think we were talking around 25 million we think we
9 have invested in the treatment plant to date. I
10 think they were trying to compile some records, but I
11 think it's around 25 million. But I don't know if
12 the cost is per 1984 or coming forward.

13 Q. So as long as we're talking about numbers,
14 do you know how much the 24-inch line cost the City
15 of Osage Beach to be constructed?

16 A. My understanding, that second forced line
17 was supposed to cost about 5 million, but I think it
18 came in at 4.5.

19 Q. So putting the 24-inch line along with the
20 sewage treatment plant, we're talking almost
21 \$30 million; is that right?

22 A. Could be.

23 Q. Okay. The sewage treatment plant, is there
24 discussions and potential plans to expand the sewage
25 treatment plant?

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1 A. We were planning on doing a feasibility
2 study to see what we needed to do because we
3 understand the growth in Lake Ozark and Osage Beach
4 we're getting to where we need to plan for the next
5 five to ten years and do an expansion.

6 Q. If the Joint Sewer Board is going to expand
7 the sewage treatment plant, can you show the hearing
8 officer here on MB-1 where it would be that the plant
9 would be expanded?

10 MR. BROWNLEE: Why don't you put it
11 up so the rest of us can see.

12 A. The area would be about 50 acres right in
13 the notch of the pink area there and to the left of
14 the red line. There's about 15 acres that the Joint
15 Board owns.

16 Q. And would that be expanding, then, closer to
17 the proposed quarry operation?

18 A. Yes.

19 Q. Mayor Lyons, is there anything about the
20 particular Applicant Magruder Limestone Company that
21 makes you oppose the proposed quarry operation as
22 opposed to if it was some other quarry company? I
23 mean, is this personal against Magruder Limestone?

24 A. No.

25 Q. Would it matter if it was some other quarry

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1 operator that wanted to build a quarry immediately
2 adjacent to your sewer lines and sewage treatment
3 plant?

4 A. No.

5 Q. If the quarry wanted to be located on the
6 property that's identified on MP-1 immediately to the
7 south of the mark that's the big green block that is
8 still bisected by the sewage treatment lines, would
9 you be here today opposing the operation of a quarry
10 on that site?

11 A. Yes, I would.

12 Q. And why is that?

13 A. I'd still have the same concerns. Having
14 been through some of the cost of what it takes to
15 operate the City on utilities and so forth, we're
16 very concerned. And we're very proud of the record
17 of the plant and we're also proud of Osage Beach and
18 we're noted for taking care of business, and anything
19 that might jeopardize that I would be opposed to.

20 Q. Is there any way that you could place a
21 dollar figure on the potential impact on the City of
22 Osage Beach if one of those lines ruptures and raw
23 sewage is spilled into the Osage River?

24 A. No.

25 Q. How come you couldn't toss out a number and

62 (Pages 242 to 245)

Page 246	Page 248
<p>1 say, this is how much it might be?</p> <p>2 A. Because I think it would not only affect the</p> <p>3 City, it would affect other entities, and I don't</p> <p>4 know what kind of impact. I don't even know how it</p> <p>5 would impact Osage Beach. I just know that we depend</p> <p>6 on the good press and we depend on publicity as a</p> <p>7 clean place to come, and I don't know what the</p> <p>8 publicity of a break would cost. I don't know the</p> <p>9 impact.</p> <p>10 Q. Is there any way that you could think of</p> <p>11 that you could even try to calculate that -- the</p> <p>12 adverse impact of such an event?</p> <p>13 A. No.</p> <p>14 Q. One last thing. The Joint Sewer Board, are</p> <p>15 they fully in -- is the Joint Sewer Board fully in</p> <p>16 support of you being here today as its representative</p> <p>17 opposing the permit to be granted to Magruder</p> <p>18 Limestone?</p> <p>19 A. Yes.</p> <p>20 Q. And the City of Osage Beach --</p> <p>21 A. Yes.</p> <p>22 Q. -- is it -- it is fully in support?</p> <p>23 A. Yes.</p> <p>24 MR. MAUER: Thank you. Nothing</p> <p>25 further at this time.</p>	<p>1 A. No.</p> <p>2 Q. Do you know about any other sources of rock</p> <p>3 that might be able to be utilized on the Highway 54</p> <p>4 Expressway project?</p> <p>5 A. I think at the hearing in Osage Beach I</p> <p>6 think Mr. Baxter said there would be on-site rock.</p> <p>7 Q. And that would be on site where the Highway</p> <p>8 54 Expressway would be constructed?</p> <p>9 A. Well, I think when he answered that they</p> <p>10 wouldn't need rock the assumption I made was there</p> <p>11 would be rock on site, in other words, cut and fill</p> <p>12 type things.</p> <p>13 Q. How would they attain that rock?</p> <p>14 A. Well, I think we have enough hills.</p> <p>15 Q. Well, they'd have to blast it, wouldn't</p> <p>16 they?</p> <p>17 A. I would assume.</p> <p>18 Q. And how long in distance is this project, if</p> <p>19 that's an accurate question? I've not reviewed the</p> <p>20 plans.</p> <p>21 A. What project?</p> <p>22 Q. The distance of the entire Highway 54</p> <p>23 Expressway, from -- I guess it goes from Osage Bridge</p> <p>24 to Camdenton?</p> <p>25 A. No.</p>
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<p>1 HEARING OFFICER: Mr. Duggan,</p> <p>2 cross-examination?</p> <p>3 MR. DUGGAN: No questions.</p> <p>4 HEARING OFFICER: Mr. Brownlee,</p> <p>5 cross-examination?</p> <p>6 EXAMINATION</p> <p>7 QUESTIONS BY MR. BROWNLEE:</p> <p>8 Q. Mayor Lyons, my name is Richard Brownlee.</p> <p>9 We've met on several occasions. Good afternoon.</p> <p>10 Congratulations on your election.</p> <p>11 A. Thank you.</p> <p>12 Q. I talked to you about that earlier. I don't</p> <p>13 need to ask, you have no experience in pipeline</p> <p>14 construction, do you, ma'am?</p> <p>15 A. No.</p> <p>16 Q. And no experience in the pipeline</p> <p>17 operations, correct?</p> <p>18 A. None.</p> <p>19 Q. No experience in blasting?</p> <p>20 A. None.</p> <p>21 Q. No experience in quarry operations?</p> <p>22 A. None.</p> <p>23 Q. Do you have any idea how the marked proposal</p> <p>24 for blasting or operations at this quarry are</p> <p>25 proposed? Do you know?</p>	<p>1 Q. No. There's a part that doesn't?</p> <p>2 A. And part of it is in Lake Ozark, and I don't</p> <p>3 know what the distance is in Lake Ozark. Ours starts</p> <p>4 where Pistols Plus is in Osage Beach.</p> <p>5 Q. What?</p> <p>6 A. Pistols Plus. It's a business. And that's</p> <p>7 our city line. And then it goes to the other side of</p> <p>8 KK, which is near Tan-Tar-A.</p> <p>9 Q. And is Pistols Plus, like, if you come</p> <p>10 across the Osage River and you come up the big area?</p> <p>11 A. It's further into here.</p> <p>12 Q. Where you're pointing down towards the</p> <p>13 bottom of the map, it's fairly close to the</p> <p>14 intersection that goes back over towards HH, or</p> <p>15 what's that road?</p> <p>16 A. Well, no.</p> <p>17 MR. MAGRUDER: It would be Business</p> <p>18 54.</p> <p>19 Q. (By Mr. Brownlee) Business 54?</p> <p>20 A. It's past that.</p> <p>21 Q. It's past that, but -- okay. I'm with you.</p> <p>22 And where does the Joint Sewer come in in the</p> <p>23 operation of the plant?</p> <p>24 A. They oversee the plant, set the bylaws.</p> <p>25 Q. But what I'm saying, when sewage -- is there</p>

1 area of operation that starts, what, right at the
2 fence line of the sewer plant?

3 A. That's my understanding, yes.

4 Q. And the sewer lines that come down to it,
5 the Joint Sewer Board doesn't own those, do they?

6 A. No.

7 Q. And who are they owned by?

8 A. Lake Ozark and Osage Beach.

9 Q. They're jointly owned?

10 A. No.

11 Q. Who owns the two that come down through the
12 marked property?

13 A. Osage Beach does.

14 Q. And the City of Osage Beach is not a party
15 to this proceeding, are they?

16 A. No.

17 Q. So concerns about those lines are for
18 parties that aren't -- are for persons or entities
19 that are not parties to this proceeding. Isn't that
20 correct? Isn't it?

21 A. Yes.

22 Q. And just a couple of little things. You
23 stated that if there's a feasibility study to be
24 prepared for the expansion of the Joint Sewer Board
25 plan it's going to go -- you said towards the

1 triangle. I'm kind of -- I see every time there's a
2 corner there's a triangle.

3 A. I think it's approximately this right in
4 here. We have about 15 acres.

5 Q. There's 15 acres?

6 A. That's my understanding.

7 Q. And you're aware that that 15 acres
8 currently is permitted by APAC to operate a quarry
9 called the Hudson Hollow site, correct?

10 A. They have a permit.

11 Q. Yes, ma'am. And it's still valid today, is
12 it not?

13 A. They've asked to be released.

14 Q. I didn't ask you what they've asked. We've
15 seen that letter. I'm asking, it's a valid quarry
16 permit today, correct?

17 A. Yeah, it is.

18 Q. And you've been to that site, have you not?

19 A. I haven't been on it. I've been by it.

20 Q. Well, you've driven down to the sewer plant?

21 A. Yeah.

22 Q. And you've seen what's called the high wall,
23 that large stone face, right?

24 A. Yes.

25 Q. Now, if you're going to expand into that

1 area, the 15 acres, how is that rock going to be
2 removed?

3 A. I'm not sure now, because we terminated
4 their lease.

5 Q. I'm talking not about the quarrying
6 operations. I'm talking about your sewer plant
7 expansion into 15 acres of a solid rock hogback. How
8 is that rock going to be removed?

9 A. When the Board met with APAC -- and I can't
10 remember, it's been about eight years ago. And I
11 don't know if I was Mayor or not at the time. I
12 could have been, because we switch every other
13 year -- I mean chairman -- the consideration was that
14 they would be able to remove the rock without damage
15 to the Sewer Board. That was the consideration.

16 Q. Okay. And that's our consideration, too, to
17 be able to have a quarry without damage to the sewer
18 lines or sewer plant. My question is -- and you know
19 this -- that would have to be blasted out, correct?

20 A. I don't know.

21 MR. MAUER: Objection. Assumes facts
22 not in evidence.

23 Q. (By Mr. Brownlee) You don't know that?

24 Well, do you know another method to remove rock?

25 A. I'm not an expert on that.

1 Q. Do you know what chipping is?

2 A. No.

3 Q. So you just don't know whether 15 acres of
4 that stone face and whatever's behind it would have
5 to be -- you don't have any idea how that would be
6 removed?

7 A. No.

8 Q. Blasting would be one option that you do
9 know about, correct?

10 MR. MAUER: Objection. Calls for
11 speculation that blasting could be done on that site.

12 MR. BROWNLEE: I didn't ask her. I
13 said blasting's an option.

14 HEARING OFFICER: Overruled.

15 Q. (By Mr. Brownlee) Blasting is an option
16 that you at least know exists, correct?

17 MR. MAUER: I'm going to object.
18 Vague and ambiguous. Exists on that site or exists
19 in general to move rock?

20 Q. (By Mr. Brownlee) Exists on that site?

21 A. I don't know that it's an option. I don't
22 think that the Joint Sewer Board thought it was an
23 option.

24 Q. Well, then tell me, if it's not an option,
25 you must know other ways to remove rock.

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1 A. I don't know other ways. All I know is we
2 discussed the impact that there would be no damage to
3 the sewer pump. That was our main concern.

4 Q. That's not what I've asked you, Mayor. I've
5 asked you simply, do you know that blasting is one
6 way to remove that 15 acres of rock that's there?

7 MR. MAUER: I'm going to object.
8 Asked and answered. She's already answered that
9 question twice and she said no.

10 HEARING OFFICER: She has answered
11 that question that she doesn't know about the
12 blasting. Do you have a different question or
13 another question, Brownlee?

14 Q. (By Mr. Brownlee) Well, if you expanded
15 into the area, the 15 acres of rock, it would have to
16 be removed; is that correct?

17 A. I understand that it would have to be
18 removed because it would have to be something that we
19 could coordinate with the existing plant.

20 Q. And you just have no opinion how that 15
21 acres of rock would be removed?

22 A. I'm not in that business.

23 Q. During the Highway 54 Expressway relocation,
24 have you had any discussion about any relocation of
25 water and sewer lines on that project?

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1 A. I've not had any personal discussion, no.

2 Q. Do you have any knowledge of how much water
3 or sewer lines will have to be relocated?

4 A. In general, we see contracts that go out at
5 the Board level. The Board makes decisions on those
6 when they come forth to relocate water and sewer
7 lines with -- you know, with MODOT's recommendations.

8 Q. And do you know whether blasting will be
9 required for that relocation?

10 A. I've not seen the word blast on any of those
11 relocations.

12 MR. BROWNLEE: Thank you.

13 HEARING OFFICER: Any redirect,
14 Mr. Mauer?

15 EXAMINATION

16 QUESTIONS BY MR. MAUER:

17 Q. Real quick, you mentioned the lease to APAC.

18 A. Yes, sir.

19 Q. For that 15 acres. Is there still a valid
20 lease in force for that 15 acres?

21 A. No.

22 Q. Has the lease been terminated?

23 A. Yes.

24 Q. So can anybody come in and start quarrying
25 on that property as we sit here today?

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1 A. I don't know.

2 Q. Would they have to get permission of the
3 owner, the Joint Sewer Board?

4 A. I would assume they would.

5 Q. One other thing. You are the Mayor of Osage
6 Beach, right?

7 A. Yes.

8 Q. And did you personally send in a letter
9 requesting to be here personally as -- along with
10 being the head of the Joint Sewer Board?

11 A. I think I did. It's been awhile. It's been
12 a hectic year.

13 MR. MAUER: Thank you. Nothing
14 further.

15 HEARING OFFICER: Wait just a moment.
16 Mr. Duggan, do you have any cross on the point of the
17 lease to APAC or a letter requesting to be at this
18 hearing sent by the Mayor?

19 MR. DUGGAN: No.

20 HEARING OFFICER: Mr. Brownlee?

21 EXAMINATION

22 QUESTIONS BY MR. BROWNLEE:

23 Q. Do you know whether the hearing request was
24 on Joint Sewer Board stationery or the City of Osage
25 Beach stationery?

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1 A. I think the hearing request was on the Joint
2 Sewer Board stationery, but I do think I had a letter
3 of concern from the Mayor, but I can't remember
4 exactly.

5 Q. A letter of concern is fine, but the fact of
6 it is the City of Osage Beach that owns these lines
7 is not a party to these proceedings, are they?

8 A. I understand that, yes.

9 Q. And so you're not a Petitioner, correct?

10 A. That's my understanding.

11 MR. MAUER: Objection. "You" being
12 the Mayor?

13 Q. (By Mr. Brownlee) The City of Osage Beach.
14 I'm sorry. I'm identifying you with the City. The
15 City of Osage Beach is not a Petitioner; is that
16 correct?

17 A. That's my understanding.

18 MR. BROWNLEE: Can I approach the
19 witness?

20 HEARING OFFICER: Yes.

21 Q. (By Mr. Brownlee) I'm going to ask you to
22 read into the record the regulation. You can
23 identify that, if you would, please.

24 A. 10 CSR 40-10.080 Public Meeting, Hearings
25 and Informal Conferences.

65 (Pages 254 to 257)

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1 Q. And if you'll read Section 2 -- no --
2 Section 3(B), please.

3 A. 3(B). "The burden of establishing an issue
4 of fact regarding the impact, if any, on the
5 permitted activity on a Hearing Petitioner's health,
6 safety and livelihood shall be on the Petitioner by
7 competent and substantial scientific evidence on the
8 record."

9 Q. So the owner of these property lines --
10 these sewer lines is not a petitioner, correct?

11 A. That's my understanding.

12 MR. MAUER: Objection. Asked and
13 answered. That's the third time Mr. Brownlee asked
14 that.

15 MR. BROWNLEE: Nothing further.

16 MR. MAUER: Can I get my objection on
17 the record, please?

18 HEARING OFFICER: Yes, Mr. Mauer, you
19 can get your objection on the record. It's on the
20 record. It's a good thing we aren't enforcing that
21 bilaterally. I can't wait to read the transcript of
22 how many times the same question has been asked and
23 answered by same Counsel because apparently the
24 Hearing Officer won't get it the first time. Any
25 re-redirect on the points covered, Mr. Mauer?

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1 MR. MAUER: Nothing, your Honor.

2 HEARING OFFICER: All right. The
3 Hearing Officer has nothing of the witness. Thank
4 you, Mayor. You are excused.

5 Mr. Mauer, that concludes as far as
6 witnesses that you are prepared to present today,
7 correct.

8 MR. MAUER: Yes, your Honor.

9 HEARING OFFICER: All right. Then I
10 take it there's nothing further from any of the other
11 parties. As I indicated earlier, an order will go
12 out confirming the dates that we have agreed to, the
13 three remaining dates for the remainder of the
14 witnesses to be presented. I understand, Mr. Mauer,
15 you have some other witnesses other than your expert
16 that you wish to offer --

17 MR. MAUER: Yes, your Honor.

18 HEARING OFFICER: -- in your direct
19 case. And I will be issuing an order closer to
20 hearing so that you will identify those for all the
21 parties so we know exactly what we're dealing with
22 there and can schedule our time.

23 MR. BROWNLEE: Can I ask a question
24 while we're on this?

25 HEARING OFFICER: Yes.

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1 MR. BROWNLEE: There are other
2 witnesses. I assume they're witnesses you've already
3 identified, correct?

4 MR. MAUER: Yes.

5 MR. BROWNLEE: They're the Sunrise
6 Beach witnesses, quarry witnesses?

7 MR. MAUER: There were other
8 witnesses, too.

9 HEARING OFFICER: Well, as indicated,
10 I'm going to issue an order, because the Hearing
11 Officer wants to know how many witnesses, who they
12 are or what it is has been indicated they'll be
13 testifying to.

14 With that, then, I appreciate the
15 participation of all the witnesses as well as
16 Counsel, and the hearing is adjourned and we are off
17 the record.

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1 CERTIFICATE OF REPORTER

2
3
4 I, Judy K. Moore, Certified Court Reporter
5 within and for the State of Missouri, do hereby
6 certify that the hearing aforementioned was held at
7 the time and in the place previously described.

8
9 IN WITNESS WHEREOF, I have hereunto set my
10 hand and seal.

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